

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-6120

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

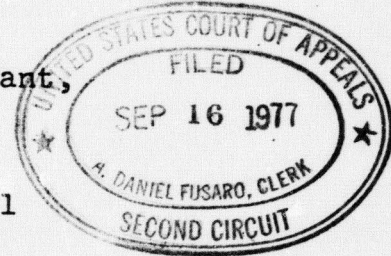
LIONEL J. BASTIEN,

Plaintiff-Appellant,

-vs-

JOSEPH P. CALIFANO, in his official
capacity as Secretary of Health,
Education and Welfare,

Defendant-Appellee.



ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

APPENDIX

Submitted by,

Monroe County Legal Assistance Corp.
Ian G. DeWaal, of Counsel
Office and Post Office Address
80 West Main Street
Rochester, New York 14614
Tel. No.: 716-325-2520

Attorneys for Plaintiff-Appellant

PAGINATION AS IN ORIGINAL COPY

APPENDIX

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209 1	76	0246	05	28	76	2	860	1		Social Sec. Disability Benefits	0902		76	0246
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PLAINTIFFS

DEFENDANTS

BASTIEN, Lionel J.

MATHEWS, F. David, in his
official capacity as Secretary
of HEW

CAUSE Pltff. challenges a determination
after hearing by the deft. that he is not
entitled to Social Security disability
benefits, as not supported by substantial
evidence. 42 U.S.C. Section 405(g). pah

ATTORNEYS

Ian C. DeWaal,
Monroe County Legal Assistance
Corporation
80 West Main Street
Rochester, New York 14614

United States Attorney
(Welch)

A 1

☐ CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
				JS-5	
				JS-6	

DATE 1976	NR.	PROCEEDINGS	
May 28	1	Filed complaint in Rochester by Judge Burke.	
28	2	" motion for leave to proceed in forma pauperis & for appointment of person to serve process.	
28	3	" order permitting pltf. to commence & prosecute action without being required to pay costs or fees etc.-Burke, DJ	F-176
28		JS 5 made	
June 7	4	Filed Pltfs. affidavit of service by mail.	
Oct. 8	5	" Deft's. answer to complaint.	
1977			
Jan. 24	6	Filed Deft's. notice of motion for an order dismissing the complaint etc. ret. 2-28-77	
Mar. 1	7	Filed Pltf's. affidavit opposing the motion of deft. to dismiss etc.	
1	8	" Pltf's. notice of motion for an order denying deft's. motion to dismiss etc. & granting summary judgment to pltf. ret. 3-14-77	
1	9	" Pltf's. affidavit of service.	
Feb. 28		Motion by Deft. to dismiss, etc. adj. to 3-14-77.	
Mar. 14		Motion by Deft. to dismiss, etc. Motion by Pltf. for summary judgment. Submitted.	
July 11	10	Filed Decision and Order that the decision of the Secy. of HEW that pltf. was not under a disability is supported by substantial evidence and summary judgment is granted to the deft.-Burke, DJ (notice to Mr. DeWaal and U.S. Atty. Attn: Eugene Welch, Asst. US Atty.)	F-190
11	11	" Judgment on Decision by the Court-Clerk (notice & cy. to Mr. DeWaal and U.S. Atty. Attn: Eugene Welch, Asst. US Atty.)	F-190
11		JS 6 made	
22	12	Filed/Pltf's. Notice of Appeal (copy mailed 7/25/77 to U.S. Atty., Attn: Eugene Welch, Esq. and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. DeWaal)	
Aug. 8		Original paper, docket entries and Clerk's certificate mailed to Clerk, CCA	

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CLOSED

Official

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LIONEL J. BASTIEN,

Plaintiff

v.

Civ-76-246

F. DAVID MATHEWS, in his official
capacity as Secretary of Health,
Education and Welfare,

Defendant

INDEX TO RECORD ON APPEAL

1. Summons and Complaint
2. Motion for leave to proceed in forma pauperis and for appointment of person to serve process
3. Order allowing plaintiff to proceed in forma pauperis
4. Plaintiff's affidavit of service of summons and complaint
5. Defendant's answer with administrative transcript attached
6. Defendant's notice of motion to dismiss the complaint
7. Plaintiff's affidavit opposing motion to dismiss
8. Plaintiff's notice of motion for an order denying defendant's motion to dismiss and granting plaintiff summary judgment
9. Plaintiff's affidavit of service of notice of motion
10. Decision and order granting defendant summary judgment
11. Judgment on decision by the court
12. Plaintiff's notice of appeal

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LIONEL J. BASTIEN,

Plaintiff,

-VS-

F. DAVID MATHEWS, in his official
capacity as Secretary of the Department
of Health Education and Welfare,

Defendant.

COMPLAINT

Civ. Act. No.

76-246

Plaintiff, by his attorney, comes before this court
and alleges, as follows:

I.
PRELIMINARY STATEMENT

1. This is an action brought by an applicant for disability benefits under the Social Security Program, 42 U.S.C. Section 423. Plaintiff seeks to have a decision of the defendant, denying him Social Security disability benefits, reversed, because the decision was not based on substantial evidence and was a denial of due process of law.

2. In the alternative, the plaintiff seeks to have the decision of the defendant reversed, vacated and remanded for a further hearing. Plaintiff alleges that he clearly demonstrated that he was unable to continue his previous employment after the onset of his disability. Once the plaintiff in this action established that he was unable to perform his old employment, the burden of proof shifted to the defendant to introduce evidence that there was another job which the plaintiff could perform or

could be trained to perform. Defendant failed to introduce any such evidence at the administrative law judge hearing.

II.
JURISDICTION

3. Jurisdiction is conferred upon this court by virtue of 42 U.S.C. Section 405 (g) as there has been a final decision by the defendant, Secretary of Health, Education and Welfare, made after a hearing to which the Secretary was a party. This action is brought in the district court for the judicial district in which the plaintiff resides.

III.
PARTIES

4. Plaintiff LIONEL J. BASTIEN (Social Security Number 079 16 5221), is a citizen of the United States and a resident of New York. He currently resides at 628 Garson Avenue, Rochester, New York. Plaintiff has been denied Social Security benefits by the defendant after an administrative law judge hearing.

5. Defendant F. DAVID MATHEWS, in his official capacity as Secretary of Health, Education and Welfare, is responsible for deciding the eligibility of applicants for Social Security benefits, 42 U.S.C. Section 405 (a),(b).

IV.
FACTUAL ALLEGATIONS

6. Plaintiff is a 55 year old male who resides with his wife.

7. Plaintiff filed an initial claim for Social Security disability benefits on January 21, 1974 and said claim was denied on February 20, 1974.

8. The application of the plaintiff was reconsidered by the Social Security Administration and again denied on November 14, 1974.

9. The plaintiff timely requested an administrative law judge hearing which was held on February 5, 1975. On October 10, 1975, the administrative law judge upheld the decision of the Social Security Administration denying plaintiff's claim for benefits.

10. The plaintiff timely appealed the decision of the administrative law judge to the Appeals Council of the Social Security Administration and said Council affirmed the decision of the administrative law judge.

11. There has been a final decision after hearing by the defendant.

12. Plaintiff has exhausted his administrative remedies.

VI.
FIRST CAUSE OF ACTION

13. Plaintiff realleges paragraphs 1 through 12 as though fully set forth hereat.

14. The decision of the defendant was not supported by substantial evidence.

SECOND CAUSE OF ACTION

15. Plaintiff repeats and realleges paragraphs 1 through 14 as though fully set forth hereat.

16. Plaintiff's testimony and the medical evidence clearly demonstrate that plaintiff could not perform the duties of his former employment.

17. On information and belief, defendant failed to introduce any evidence that there was another particular job which plaintiff could perform or be trained to perform, given his age, training, education, experience and disability.

18. The decision of the defendant denied plaintiff due process of law and was not based on substantial evidence.

WHEREFORE, plaintiff respectfully requests that this court:

1. Reverse the decision of the defendant denying Social Security disability benefits to the plaintiff and order that the Secretary commence paying such benefits retroactive to plaintiff's date of application, in accordance with the requirements of the Social Security Act.

2. Alternatively, vacate the decision of the defendant, hold that plaintiff was incapable of performing his old job on the date of his application and for the prior year and remand for a hearing on whether there was any other specific job that plaintiff was capable of performing subsequent to the onset of his disability.

DATED: May 28, 1976

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716 325 2520

51 *Ian C. DeWaal*

IAN C. DEWAAL, ESQ.
MONROE COUNTY LEGAL
ASSISTANCE CORPORATION
80 West Main Street
Rochester, New York 14614

LIONEL J. BASTIEN,

Plaintiff

- vs -

F. DAVID MATHEWS, in his official
capacity as Secretary of Health,
Education and Welfare,

Defendant

CIVIL NO. 76-246

A N S W E R

The defendant F. David Mathews, Secretary of Health, Education and Welfare, by its attorneys, Richard J. Arcara, United States Attorney for the Western District of New York, and Eugene Welch, Assistant United States Attorney, herein answers the complaint of plaintiff as follows:

1. The defendant admits the allegations contained in paragraphs 3, 4, 5, 7, 8, 9, 10, 11 and 12.

2. The defendant denies the allegations contained in paragraphs 1, 14 and 18.

3. With respect to plaintiff's request in paragraph 2 that this case be remanded by the court to defendant, defendant states that plaintiff has not shown "good cause" pursuant to Section 205(g) of the Act, 42 U.S.C. 405(g) to warrant remand.

4. Answering the allegations contained in paragraphs 6, 16 and 17 specifically and the complaint generally, defendant denies that plaintiff is entitled to a period of disability and to disability insurance benefits, states that the decision of the Secretary is correct and in accord with applicable law and regulations, and, further, defendant states that the facts and issues in this matter are fully set forth in the administrative transcript, a copy of which is attached hereto as part of the

5. With respect to paragraph 13, defendant realleges his answers to paragraphs 1 through 12 of plaintiff's complaint.

6. With respect to paragraph 15, defendant realleges his answers to paragraphs 1 through 14 of plaintiff's complaint.

7. The findings of fact of the Secretary of Health, Education and Welfare are supported by substantial evidence and are conclusive.

8. In accordance with Section 205(g) of the Social Security Act, 42 U.S.C. 405(g), defendant files as part of the answer a certified copy of the transcript of the record including the evidence upon which the findings and decisions complained of are based.

WHEREFORE, defendant prays for judgment dismissing the complaint with costs and disbursements and for judgment in accordance with Section 205(g) of the Social Security Act, 42 U.S.C. 405(g), affirming the decision complained of.

Dated at Rochester, New York, October 7, 1976.

RICHARD J. ARCARA
United States Attorney for the
Western District of New York
Office and Post Office Address:
233 U.S. Courthouse
100 State Street
Rochester, New York 14614

/s/ Eugene Welch

By: EUGENE WELCH
Assistant United States Attorney
Attorney for Defendant, Secretary
of Health, Education and Welfare
Telephone: 716-263-6762

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

LIONEL J. BASTIEN,

Plaintiff

vs.

CIVIL ACTION NO. 76-246

DAVID MATHERS,
SECRETARY OF HEALTH,
EDUCATION, AND WELFARE,

Defendant

C E R T I F I C A T I O N

I, Paul R. Muller, Chief, Civil Actions Branch, Division of Appeals Operations, Bureau of Hearings and Appeals, Social Security Administration, Department of Health, Education, and Welfare, under authority conferred upon me by the Secretary, hereby certify that the documents annexed hereto constitute a full and accurate transcript of the entire record of proceedings relating to the application of Lionel J. Bastien to establish a period of disability, and his claim for disability insurance benefits under title II of the Social Security Act, as amended, such transcript including application for a period of disability and disability insurance benefits, testimony and other evidence upon which the decision of the administrative law judge of the Bureau of Hearings and Appeals, Social Security Administration, was based.

Date: August 12, 1976


Paul R. Muller

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Lionel J. Bastien, Claimant and Wage Earner

Account Number 079-16-5221

COURT TRANSCRIPT INDEX

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8-12-76

(i)

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Lionel J. Bastien

079-16-5221

(Claimant)

(Social Security Number)

(Wage Earner) (Leave blank if same as above)

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EXHIBITS

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>NO. OF PAGES</u>	<u>COURT TRANSCRIPT</u>
			<u>Page No.</u>
1	Application for Disability Insurance Benefits, filed January 21, 1974	4	75-78
2	Copy of Notice of Determination, dated February 20, 1974	2	79-80
3	Request for Reconsideration, dated July 10, 1974	1	81
4	Copy of Notice of Reconsideration Determination, dated November 14, 1974	1	82
5	Disability Determination by State Agency, affirmed by Social Security Administration on February 14, 1974	2	83-84
6	Disability Determination by State Agency, affirmed by Social Security Administration on November 5, 1974	2	85-86
7	Application for Social Security Account Number, dated June 28, 1937	1	87
8	Earnings Certification, certified February 5, 1974	1	88
9	Employers Insurance of Wausau, Notice that payment of compensation for disability has been stopped or modified, dated May 4, 1973, with attachments	4	89-92
10	W.C.B. Report of Medical Examination, dated January 3, 1974	1	93
11	W.C.B. Notice of Decision, dated January 8, 1974	2	94-95
12	Railroad Employment Questionnaire, dated January 21, 1974	1	96
13	Medical History and Disability Report, dated (no date)	8	97-104
14	Work Activity Report, dated January 21, 1974	4	105-108

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Lionel J. Bastien

079-16-5221

(Claimant)

(Social Security Number)

(Wage Earner) (Leave blank if same as above)

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EXHIBITS

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>NO. OF PAGES</u>	<u>COURT TRANSCRIPT</u>
			<u>Page No.</u>
15	Medical History and Disability Report, dated July 10, 1974	8	109-116
16	New York State Department of Labor, Unemployment Insurance Division, Summary of Interview, dated July 10, 1974	1	117
17	Statement of Claimant, dated November 21, 1974	4	118-121
18	W.C.B. Report from D. Sewall Miller, Jr., M.D., dated June 25, 1974	1	122
19	Report from Marvin N. Goldstein, M.D., for examination on October 9, 1974, with attachments	3	123-125
20	Report from George W. Parker, M.D., dated October 9, 1974	1	126
21	Professional Qualifications, ^{D.} Sewall Miller, M.D., Jr., M.D.	1	127
22	Professional Qualifications, Marvin N. Goldstein, M.D.	1	128

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Lionel Bastien

079-16-5221

(Claimant/Applicant)

(Social Security Number)

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(Wage Earner) (Leave blank in Title XVI Cases and if name is same as above)

EXHIBITS

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23	W.C.B. Report from D. Sewall Miller, Jr., M.D. for examination on November 19, 1974	1	129
<u>RECEIVED AT HEARING:</u>			
24	Employers Insurance of Wausaw, Notice that payment of compensation for disability has been stopped or modified, dated November 7, 1974	2	130-131
<u>RECEIVED SUBSEQUENT TO HEARING:</u>			
25	Copy of Letter to Director, Bureau of Disability Determinations from Administrative Law Judge, dated February 10, 1975	1	132
26	Copy of Letter to Director, Bureau of Disability Determinations from Administrative Law Judge, dated February 28, 1975	1	133
27	Copy of Letter to Director, Bureau of Disability Determinations from Administrative Law Judge, dated March 11, 1975	1	134
28	W.C.B. Employer's Report of Injury, dated June 7, 1968	2	135-136
29	W.C.B. Report from Philip G. Clarke, M.D., dated June 11, 1968	1	137
30	W.C.B. Reports from Lloyd Leve, M.D., covering period June 17, 1968 to April 14, 1969	10	138-147
31	W.C.B. Attending Physician's Supplementary Report by Norman Elson, M.D., dated June 26, 1968	2	148-149
32	W.C.B. Report by Lloyd Leve, M.D., covering period October 29, 1968 to December 17, 1968	3	150-152
33	W.C.B. Reports by Fred W. Geib, M.D., covering period April 28, 1969 to July 8, 1970	8	153-160
34	Report by T. B. Steinhausen, M.D., dated May 6, 1969	1	161

Lionel Bastien

079-16-5221

4

(Claimant/Applicant)

(Social Security Number)

(Wage Earner)

(Leave blank in Title XVI Cases and if name is same as above)

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EXHIBITS

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>NO. OF PAGES</u>	<u>COURT TRANSCRIPT Page No.</u>
35	W.C.B. Reports of Medical Examinations by Dr. Della Porta, covering period June 24, 1969 to November 11, 1971	5	162-166
36	W.C.B. Reports by Joseph C. Maggio, M.D., covering period January 1, 1970 to November 11, 1971	8	167-174
37	W.C.B. Reports by Alexandra Feldmahn, M.D., covering period May 20, 1970 to February 5, 1971	7	175-181
38	W.C.B. Attending Physician's Supplementary Reports from Roger Miller, M.D., covering periods June 11, 1970 to January 9, 1971	5	182-186
39	W.C.B. Report of Medical Examination by Dr. Méle, dated May 24, 1971	1	187
40	W.C.B. Reports by William Cotanch, M.D., covering period May 7, 1973 to June 3, 1973	4	188-191
41	W.C.B. Report by Santo Brancato, M.D., dated February 6, 1970	1	192
42	W.C.B. Employer's Report of Injury by M. Matochik, R.N., dated February 23, 1973	1	193
43	W.C.B. Report by D. Sewall Miller, Jr., M.D., covering period February 28, 1973 to February 17, 1975	15 27	194-208
44	W.C.B. Report by Austin Leve, M.D., for examination on April 11, 1973	2	209-210

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HA-540
(4-74)

In Title II, Title XVIII, and Black Lung Cases - File in Hearing File
In Title XVI Case - File in Claim File

Lionel Bastien

(Claimant/Applicant)

079-16-5221

(Social Security Number)

5

(Wage Earner)

(Leave blank in Title XVI Cases and if name is same as above)

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EXHIBITS

EXHIBIT
NO.

DESCRIPTION

NO. OF
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45	W.C.B. Report from the Genesee Hospital, Rochester, New York, dated June 4, 1973	2	211-212
46	W.C.B. Reports of Medical Examinations by Dr. Della Porta, dated January 3, 1974 and April 15, 1974	2	213-214
47	W.C.B. Reports by Joseph Maggio, M.D., covering period January 3, 1974 to April 15, 1974	2	215-216
48	W.C.B. Report by Norman Egel, M.D., for examination on March 12, 1974	3	217-219
49	Letter to Administrative Law Judge from Claimant, dated September 20, 1975	3	220-222

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Lionel J. Bastien
(CLAIMANT)

6
079-16-5221
(SOCIAL SECURITY NUMBER)

(WAGE EARNER) (LEAVE BLANK IF SAME AS ABOVE)

AC EXHIBIT LIST

EXHIBIT NO.

DESCRIPTION

COURT TRANSCRIPT
PAGE NO.

AC-1

Workmen's Compensation Board Order
of Restoral dated October 16, 1975,
signed by Albert D. Antoni, Chairman.

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AC-2

Medical report dated September 23, 1975,
signed by D. Sewell Miller, Jr., M.D.

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DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS

7

ORDER OF APPEALS COUNCIL

In the case of

Claim for

Lionel J. Bastien
(Claimant)

Period of Disability and
Disability Insurance Benefits

(Wage Earner)

079-16-5221

(Social Security Account Number)

Upon consideration of the facts and for good cause shown, the Appeals Council finds that an extension of time within which to commence a civil action is warranted. Accordingly, it is hereby ordered that the time to commence a civil action, in the United States District Court for the Western District of New York for the purpose of reviewing the decision of October 10, 1975, is extended to and including May 28, 1976, the day on which such action was actually filed.

APPEALS COUNCIL

Marshall C. Gardner
Marshall C. Gardner, Member

Date:

8/4/76

MONROE COUNTY LEGAL ASSISTANCE CORP.

8

DAVID C. LEVEN
Executive Director
MARIANNE ARTUSIO
Deputy Director
JOHN M. LEFEVRE
Senior Staff Attorney
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GREATER UPSTATE
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Rochester, New York 14614
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LEGAL SERVICES PROJECT
126 Pine Street
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LEGAL SERVICES PROJECT
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Middletown, New York 10940
914-343-0031

May 28, 1976

Mr. C. Howard
Webb Building
SSA Bureau of Hearings and Appeals
Ballston Tower No. 2
801 North Randolph Street
Arlington, Virginia 22203

Re: Civil Action of Lionel J. Bastien
Soc. Sec. No. 079 16 5221

Dear Mr. Howard:

I am writing on behalf of Mr. Bastien to request an extension of time to file a civil lawsuit concerning the decision of the Appeals Council denying his application to have the decision of the administrative law judge overturned in his case. The decision of the Appeals Council was dated March 1, 1976.

There are several reasons why I feel this request is justified. Apparently, Mr. Bastien's prior counsel felt that such an appeal was not justified. I talked with this prior counsel today and discovered that he was a former Workman's Compensation judge in New York State and applied the standard of disability applied in compensation cases in determining whether or not to pursue the appeal to federal court. I believe that this background clearly demonstrates that Mr. Bastien was given questionable advice concerning the prospect of success in federal court. I do believe Mr. Bastien has a valid case and should not be penalized for the unfortunate circumstance he was put in by this advice.

Furthermore, dissatisfied with this decision by his prior attorney not to pursue the appeal, Mr. Bastien apparently contacted his congressman, Frank Horton and then wrote him a letter to follow up. In response, Congressman Horton wrote that he had until June 1, 1976 to file his civil action. Mr. Bastien, relying on this information, came into our office yesterday to seek another opinion on his claim.

After reviewing his case and discussing it with the rest of the staff in my office, it seemed clear that Mr.

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Bastien fits within the definition of disability as defined in the Social Security regulations as interpreted by federal case law. Since I am anxious to get this request to you in a hurry, I will not prolong this letter with a long recitation of cases, but I do want to cite one recent case which is right on point since it involves an individual whose previous employment like that of Mr. Bastien had been doing loading and lifting of heavy objects. The Court in that case held:

Nor is the fact that "she retains the capacity to engage in sedentary to light work activity" relevant here. It is undisputed that Ms. Thorne's job required heavy lifting, the carrying of heavy bundles...stooping, bending. The medical testimony shows the futility of her attempting such a task under her present physical condition.

Thorne v. Weinberger, 350 F2d 580,
at 582.

The Court additionally held that once the claimant demonstrated an incapacity to perform previous employment, the Secretary must introduce evidence that given the age, education, disability, work experience of the claimant, there is another job in the national economy which he is capable of performing or could be trained to perform. Every case I have previously researched on the subject holds this to be the case. In Mr. Bastien's hearing as indicated by the decision of the administrative law judge shows, that his previous employment basically involved lifting and loading heavy objects and standing for long periods of time, too activities. In his findings of fact the administrative law judge on page 14 indicates clearly that Mr. Bastien is incapable of performing any of these functions:

The claimant is found not able to do heavy labor or work which requires regular bending, heavy lifting, constant stooping, long standing or walking for extended distances and periods, but he is able to function otherwise in a normal manner both mentally and physically.

The Courts have clearly held that the last statement in the preceding paragraph is insufficient to find that an individual is not disabled. The Courts have clearly held that where as here the medical evidence and the testimony indicate that an individual cannot perform his previous employment, there must be some evidence presented which specifically shows he can do something else. Given Mr. Bastien's eighth grade education and age, 55 years, it is hardly likely that he is employable or retrainable.

It would be a gross injustice if despite his clear disability, Mr. Bastien is penalized for the wrong advice he was given by his former attorney. It would be an added injustice if Mr. Bastien was not allowed to rely on the advice he

(3)

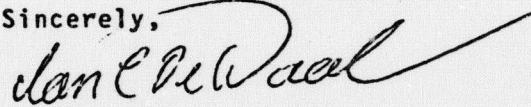
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obtained from Congressman Horton (please see a copy of his letter attached).

Therefore, on behalf of Mr. Bastien, I am requesting that an extension of time to file a civil law suit be granted in this case. I am further asking, that should the Appeals Council feel that a review of the case is warranted, that the Council reopen its decision and allow submission of evidence which shows the continuing deterioration of Mr. Bastien's condition.

On behalf of Mr. Bastien, I thank you for your concern.

Sincerely,



Ian C. DeWaal, Esq.

P.S. I am writing to you at the direction of Ms. Lindsey of the Social Security Administration, Tel. No. 235-9034, who I spoke with today concerning the question of whether Congressman Horton had requested and obtained an extension of time on behalf of Mr. Bastien.

Enc. 1

cc.: Congressman Frank Horton

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FRANK HORTON
U.S. REPRESENTATIVE
34TH DISTRICT OF NEW YORK

COMMITTEE:
GOVERNMENT OPERATIONS
RANKING MINORITY MEMBER

DAVID A. LOVEHEIM
ADMINISTRATIVE ASSISTANT

WASHINGTON OFFICE:
2225 RAYBURN BUILDING
WASHINGTON, D.C. 20513
(202) 225-4916

Congress of the United States
House of Representatives
Washington, D.C. 20515

May 21
1976

DISTRICT OFFICE:
314 FEDERAL BUILDING
ROCHESTER, NEW YORK 14614
(716) 263-6271

ARTHUR W. KELLY
SPECIAL ASSISTANT

DOLORES ROSE
FEDERAL LIAISON ASSISTANT

WAYNE COUNTY OFFICE BUILDING
LYONS, NEW YORK

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Mr. Lionel J. Bastien
628 Garson Avenue
Rochester, New York 14609

Dear Mr. Bastien:

Thank you for your letter of May 20 with reference to your Social Security disability claim.

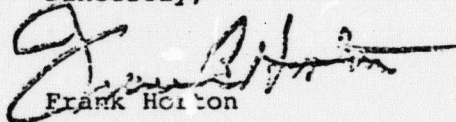
I have carefully reviewed this matter, and note that you have to commence a civil action before June 1 in order to initiate a court review.

I would suggest you immediately contact your attorney concerning this matter in order to protect your right to a court review.

In the meantime, I am contacting Social Security officials on your behalf.

With kindest personal regards, I am

Sincerely,


Frank Horton

FH:dr

A 22

Dept of Health & Education & Welfare 4/13/76
 Social Security Administration
 P. O. Box 2518 - Washington, D.C. 20013

1HA-2

079-16-5221

Dear Mr Stewart:

I m regards to
 my social security benefits which
 I was denied, let me inform
 you I haven't worked since
 Jan 14 - 1974, I been living
 on a compensation check of \$43.43
 a week that is for me & my wife
 we lived like people of the
 lower, lower, class. Have a
 hard times to make ends meet.

I hurt my back at the R. T.
 F under Co Feb 28, 1972

I went for emergency treatment
 they took X RAYS, they told
 me I should see a doctor so
 they made an appointment for
 me to see Doctor Sewell Miller Jr
 220 Genessee Hospital, which

A 23

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I did, he took quite a few X
 rays and told me, I had arthritis
 very bad, he put me on medication
 and therapy. I did not improve
 I got worse, and I'm not the
 same, I ache all over, he
 says I have Degenerative progressive
 arthritis, he put me in for
 Social Security. My wife & I don't
 live on \$43.43 a wk, she
 just can't find a job in
 Rochester, she is 57 yrs old
 I had to take loans out on
 my life insurance to survive
 I had to borrow 700.00 from
 the Beneficial Finance Co
 I have a double house
 up & down we live down.
 my tenants are on Welfar I
 received 200.00 a month
 my mortgage is 235.00 a mo.

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3

my Gas & Electric runs me
 between 50⁰⁰ + 55⁰⁰ a month
 now they are going to raise
 the rates. Finance Co 30.00
 a month, Life Ins 10.04
 a month, water bills 120 a
 yr average - Pure water
 180.00 a yr I have to
 pay 25. twice a month for
 46.00 worth of food stamps.
 I had to give up my family
 doctor Santo Brencato because
 I couldn't afford to pay him
 \$1.00 a visit, I went to
 welfare they denied me help
 said my income was to great.
 Rent 200. a month
 Comp 43.43 a wk.

this is my income.
 if it wasn't for the Va I
 might be dead now, they

A 25

4 -

help me out on medication
which I have to take the rest
of my life. They cost money
I just didn't have the money
here is a list of the
medication I received

Norgesic - 3 a day

Albomet - 250 mg 3 a day

Latisip - 40 mg 1 a day

Dymelor - 500 mg - 1 a day

Mr. Shipton of the U. R. said

I would have to take these
for the rest of my life.

I've went thru hell for the past

3 yrs - my wife & I had to

use our nest egg we had to use

when we retired it was in the

sum of \$13,000 thirteen thousand

dollar we had to use every

cent to live on.

- 5 -

I can not fight Social Security any more, my lawyer told me, it would cost too much to fight it in Civil Court. I have no money. I won't be able to work for the rest of my life. I never was sick in my life, worked all of my life since I got of the service. I had 9 yrs 2 mo in the service. White Methodist. I'll just have to rely on the Lord, maybe my day will come.

Thank you

Mr Lionel J Bastien
628 Garrison Ave
Rochester N.Y. 14609

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

P.O. BOX 2518, WASHINGTON, D.C. 20013

March 1, 1976

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BUREAU OF
HEARINGS AND APPEALS

REFER TO: IHA-2
079-16-5221

ACTION OF APPEALS COUNCIL ON REQUEST FOR REVIEW

Mr. Lionel Bastien
628 Carson Avenue
Rochester, New York 14609

Dear Mr. Bastien:

Your request for review of the decision in your case has been carefully considered by the Appeals Council. The Council considered all the evidence in your case, the applicable law and regulations, the reasoning and the evaluation of the facts in the decision, and your reasons for believing that your claim should be allowed.

The Appeals Council has decided that the decision is correct. Further action by the Council would not, therefore, result in any change which would benefit you. Accordingly, the hearing decision stands as the final decision of the Secretary in your case. The additional evidence received in connection with the request for review of the hearing decision has been considered by the Appeals Council.

If you desire a court review of the hearing decision, you may commence a civil action, within sixty (60) days from the date of this letter, in the district court of the United States in the judicial district in which you reside. See section 205(g) of the Social Security Act, as amended (42 U.S.C. 405(g)), and section 422.210 of Social Security Administration Regulations No. 22 (20 CFR 422.210).

If such action is commenced, the Secretary of Health, Education, and Welfare is the proper defendant. Also, please include your social security number in the Bill of Complaint.

Sincerely yours,


Kenneth E. Stewart

Member, Appeals Council

cc:
Mr. Donald P. Kelly
Attorney at Law
Rochester, New York 14609

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DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS

18

ORDER OF APPEALS COUNCIL
RECEIPT OF ADDITIONAL EVIDENCE

In the case of

Lionel J. Bastien

(Claimant)

(Wage Earner) (Leave blank if same as above)

Claim for

Period of Disability and
Disability Insurance Benefits

079-16-5221

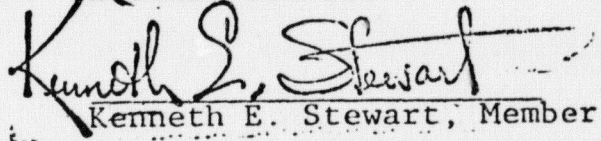
(Social Security Number)

Evidence in addition to that which was before the presiding officer has been received by the Appeals Council and is hereby made a part of the record. That evidence consists of the following exhibits:

- Exhibit AC-1 Workmen's Compensation Board Order of Restoral dated October 16, 1975, signed by Albert D. Antoni, Chairman.
- Exhibit AC-2 Medical report dated September 23, 1975, signed by D. Sewell Miller, Jr., M.D.

Date: 2-27-76

APPEALS COUNCIL


Kenneth E. Stewart, Member

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Room 550, 1 West Genesee Street
Buffalo, New York 14202

December 5, 1975

Lionel J. Bastien, Claimant
SS AN 079-16-5221

Donald P. Kelly, Esq.
Attorney at Law
45 Belgard Street
Rochester, New York 14609

Dear Mr. Kelly:

This is to acknowledge receipt of your letter dated December 4, 1975, requesting review of the Administrative Law Judge's decision dated October 10, 1975 in the subject case.

Copy of the request for review is attached.

All reports which you enclosed have been forwarded to the Appeals Council, Washington, D. C. 20013 for their consideration and you should hear from that office shortly.

Very truly yours

John J. Dumpert,
Administrative Law Judge

Encl.

CC:
AC

JJDUMPERT:SP

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS

REQUEST FOR REVIEW OF HEARING DECISION/ORDER

Take or mail original and all copies to your local social security office.

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CLAIMANT Lionel Bastien	CLAIM FOR ☒ Entitlement to Disability Benefits
WAGE EARNER (Leave blank if same as above)	☐ Continuance of Disability Benefits
SOCIAL SECURITY NUMBER 079-16-5221	☐ Other (Specify) _____
SPOUSE'S NAME AND SOCIAL SECURITY NUMBER (Complete ONLY in Supplemental Security Income Case)	☐ Supplemental Security Income
	☐ Continuance of Supplemental Security Income

I disagree with the action taken on the above claim and request review of such action by the Appeals Council, of the Bureau of Hearings and Appeals. My reasons for disagreement are:

See attached letter from Donald P. Kelly, Esq., dated December 4, 1975 and attachments (Report, D. Sewall Miller, Jr., M.D. dated September 23, 1975 and copy of Board Order of Restoral, Workmen's Compensation Board, dated October 16, 1975. *(See Ltr. AC-2 and AC-1)*)

Attach to this form, or forward within 10 days to the Appeals Council at the address checked below, any evidence you wish to submit.

Signed by: (Either the claimant or representative should sign - Enter addresses for both)	
SIGNATURE OR NAME OF CLAIMANT'S REPRESENTATIVE ☒ ATTORNEY ☐ NON-ATTORNEY /s/ Donald P. Kelly	CLAIMANT'S SIGNATURE /s/ Lionel Bastien
STREET ADDRESS 43 Belgard Street	STREET ADDRESS 628 Garson Avenue
CITY, STATE, AND ZIP CODE Rochester, New York 14609	CITY, STATE, AND ZIP CODE Rochester, New York 14609
TELEPHONE NUMBER 716-482-1836	TELEPHONE NUMBER Unk.
DATE December 5, 1975 Claimant should not fill in below this line	

TO BE COMPLETED BY SOCIAL SECURITY ADMINISTRATION

Is this request filed timely? ☒ Yes ☐ No

If "no" is checked: (1) attach claimant's explanation for delay; (2) attach any pertinent letter, material or information in Social Security Office.

ACKNOWLEDGMENT OF REQUEST FOR REVIEW OF HEARING DECISION/ORDER

Request for Review of Hearing Decision/Order in this case was filed on **December 5, 1975** at **Buffalo, N.Y.**
The APPEALS COUNCIL will notify you of its action on your request.

☒ Appeals Council
Bureau of Hearings and Appeals, SSA
P.O. Box 2518
Washington, D.C. 20013

☐ Appeals Council
Bureau of Hearings and Appeals, SSA

For the Social Security Administration
BY *(Signature)*
Administrative Law Judge, Bureau of
Hearings and Appeals, SSA
R (Summit 350) 11 West Genesee Street
Buffalo, New York 14202
(City) (State) (ZIP Code)

DONALD P. KELLY
ATTORNEY AND COUNSELOR AT LAW
45 BELGARD STREET
ROCHESTER, NEW YORK 14609

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PHONE 482-1836
AREA CODE 716

December 4, 1975

Re: Lionel J. Bastien - SSN 079-16-5421

Department of
Health, Education, and Welfare
Bureau of Hearings and Appeals, SSA
1 West Genesee Street
Buffalo, New York, 14202

Sirs: In behalf of my client, the above named I request review by the Appeals Council of the Administrative Law Judge's decision dated October 10, 1975 denying Mr. Bastien disability insurance benefits under sections 216 (1) and 223 of the Social Security Act, as amended. I believe not enough emphasis was given to reports of his attending and still attending physician, D. Sewall Miller, Jr., M.D. I am submitting the most recent Report of Dr. Miller, herewith. In addition the Workmen's Compensation Board of the State of New York has re-opened his case for determination to be made whether in fact the claimant may be totally disabled. I am enclosing a copy of the Board's order. Thank you for any courtesies extended.

Yours very truly,

Donald P. Kelly

dpk/bhs
Enc. (2)

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DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS

22

Name and Address of Claimant:

• Mr. Lionel Bastien
628 Garson Avenue
Rochester, New York 14609

NOTICE OF DECISION

PLEASE READ CAREFULLY

If you disagree, in whole or in part, with the enclosed decision you may request the Appeals Council to review it. However, your request for review must be filed within 60 days following the date shown below.

You, or your representative, may file the request for review at your local social security office, or it may be filed with the hearing office or the Appeals Council.

Unless you file a timely request for review by the Appeals Council, you may not obtain a court review of your case under sections 205 (g), 1631(c)(3), and 1869(b) of the Social Security Act.

This notice and enclosed copy of hearing
decision mailed
October 10, 1975

CC:

Name and Address of Representative:

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DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS

23

DECISION

In the case of

Lionel J. Bastien

(Claimant)

(Wage Earner)(Leave blank if same as above)

Claim for

Period of Disability and
Disability Insurance Benefits

079-16-5221

(Social Security Number)

This matter comes within our jurisdiction on a timely appeal by Lionel J. Bastien, the claimant, from a determination of the Social Security Administration, Department of Health, Education and Welfare, denying the claimant disability insurance benefits under sections 216(i) and 223 of the Social Security Act, as amended.

The record shows the claimant, on January 21, 1974 filed an application for disability benefits, and that on February 20, 1974 the Administration denied the claim. Upon reconsideration, on November 14, 1974, the Administration affirmed its denial on the ground the claimant was not under a "disability" as defined in the above sections of the Act.

After filing a timely written request, a hearing was held in Rochester, New York on February 5, 1975 before the undersigned Administrative Law Judge of the Social Security Administration. The claimant was present and testified.

APPLICABLE LAW AND ISSUES

The general issues in this matter are whether the claimant is entitled to a period of disability and to disability insurance benefits under sections 216(i) and 223, respectively, of the Social Security Act, as amended. The specific issues are whether the claimant was under a "disability" as defined in the Social Security Act, as currently amended, and if so, when such disability commenced, the duration thereof, and whether the special earnings requirements were met for the purpose of entitlement.

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Section 223(d)(1) of the above Act defines a "disability":

"(d)(1) The term 'disability' means--

(A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; * *

(2) For purposes of paragraph (1) (A)--

(A) an individual * * * shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), 'work which exists in the national economy' means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(3) For purposes of this subsection a 'physical or mental impairment' is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

* * *

(5) An individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Secretary may require."

The Act further provides that the foregoing provisions " . . . shall be applied for purposes of determining whether an individual is under a disability within the meaning of . . ." Section 216(i) with respect to the establishment of a period of disability.

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SPECIAL EARNINGS REQUIREMENT

The claimant was specially insured under sections 216(i)(3)(B)(i) and 223(c)(1)(B)(i) for disability purposes at all times in issue and will continue to be so insured to December 31, 1978.

CLAIMANT'S CONTENTION AND ADMINISTRATION'S DETERMINATION

The claimant takes the position that he has not been able to engage in any substantial gainful activity since June 29, 1973 due to "arthritis in back (along spine) and hands." The Administration, in denying the claim in its reconsidered determination of November 14, 1974 found, in part:

"A careful review has been made of this evidence taking into consideration your age, education, training and work experience. We find that the previous determination denying your claim for disability insurance benefits was proper under the law.

A person may be considered disabled only if he is unable to perform any substantial gainful work due to a medical condition which has lasted or can be expected to last for a continuous period of at least 12 months. His impairment must be so severe as to prevent him from working not only in his usual occupation but in any other substantial gainful work." (Exhibit No. 4)

MEDICAL EVIDENCE

A. Pre-1973 Record

1. Injury suffered on May 21, 1968 - In R. T. French Company's "Employer's Report of Injury", Exhibit No. 28, the claimant suffered an injury to his right shoulder, arm and upper back. He was referred to Dr. Normal Elson of Rochester, New York, as well as numerous physicians in that area (e.g. Drs. Philip G. Clark, Lloyd H. Leve, Leonard L. Zinker, Fred W. Gieb, Della Porta, Joseph C. Maggio, et al.) On June 11, 1968 Dr. Philip G. Clarke, a radiologist

noted that: "... there is no evidence of recent or old fracture or subluxation in the cervical region and no bone destructive changes or major anomalies are seen." He reported that the seven cervical vertebral bodies were normally aligned.

Dr. Lloyd H. Leve reviewed the claimant's history of complaints of back pain. He noted that some degenerative arthritis indications appeared on the x-rays taken of the claimant. Noting that the patient might suffer from some sort of mild, permanent disability he advised heat treatment, analgesics and the use of a towel collar. He believed that gradual resolution of this condition, brought about by an acute cervical strain (with radicular involvement), was possible. He reported the claimant would be able to resume work within ten to fourteen days. The claimant returned often complaining of considerable pain and/or numbness and discomfort in his right arm and radicular type pain in his right index finger and middle fingers.

In his last report on April 14, 1969, Dr. Leve recommended that some "relevant restrictions" apply to Mr. Bastien's work at R. T. French Company, but noted: "Personally I feel Mr. Bastien is employable and do not authorize any lost time from work."

Other doctors made similar prognoses. Dr. Leonard L. Zinker, a neurological surgeon, wrote to the Workmen's Compensation Board on December 17, 1968 and reported that he could find no abnormal findings and discharged the claimant, although the claimant came to him alleging trouble with his right forearm, and had in the past complained of aching pain in his arm.

Dr. Fred W. Gieb reported to Employer's Mutual Insurance Company on May 2, 1969 that a recent neurological examination of the claimant was negative. After a myelogram was performed on May 20, 1969, Dr. Gieb reported that it turned out completely negative, and stated: "I certainly thought that this man would have something with the findings, but apparently there is nothing within the canal." On June 6, 1969, Dr. Gieb's impression summed up much of the pre-1973 medical evidence: "I told the patient that I did not think

he needed any further medical treatment observational care. He is working. I do not think there is anything we can come up with so far as any tangible means of diagnosis to corroborate his subjective symptoms." After repeated visits to Dr. Gieb in August 1969 and 1970, the doctor noted: "The symptomatology is identical, call it what you may. It is not a real neuritis such as we think of such a term medically He has no working disability and I would say that his condition is no different now then it was previous to the time he was complaining of difficulty in May 1968."

Dr. Alexandra L. Feldmahn, had seen the claimant on several occasions, and had recommended surgery based upon carpal tunnel syndrome diagnosis, after the surgery she prescribed medication (Prednisone), and observed his recovery after the October 20, 1970 operation. On February 26, 1971 she reported that the patient may be allowed to return to work on March 1, 1971. Dr. Roger Miller, his surgeon, also appeared to concur with Dr. Feldmahn's view of recovery. Dr. Mele on May 24, 1971 reported to the Workmen's Compensation Board that the claimant did have a mild partial disability based upon an examination of the right wrist and hand.

Dr. Della Porta on the 11th of November, 1971 reported that upon examination the claimant's disability was noted as permanent and equal to a scheduled loss of the use of 10% of his right hand. Dr. Joseph C. Maggio on January 8, 1970 found that the claimant had no objective evidence of disability, though later Dr. Maggio stated that the claimant did have a minimal, partial disability (10% permanent loss of use of right hand). In concluding his examination report, Dr. Maggio stated that the claimant has made a complete recovery and that there was no reason for anticipating any permanency; he did not feel that "... this person at the time of my examination presented any objective signs of disability that could have resulted from any injury sustained in his accident of May of 1968."

B. 1973 Injury to Present

On February 23, 1973, R. T. French Company filed another "Employer's Report of Injury" in regard to an accident at work suffered by Mr. Bastien, now a janitor/laborer. He claimed to have strained his back pulling a cabinet off the wall with two other employees; this caused him considerable pain on the right side of his back. He was referred to Dr. D. Sewall Miller, Jr., after having been treated at the Genesee Emergency Hospital. When seen by Dr. Miller the claimant was complaining of pain in the lower interscapular area and thoracolumbar junctional area. On examination Dr. Miller found the claimant had 60 degrees flexion with extension to 20 degrees. Left and right bends were limited by perhaps 10 degrees. There was mild to moderate bilateral paraspinal muscle mass spasm. Straight leg raising caused some mild, mid-back pain. However, confirmatory tests were negative. The claimant had fairly tight hamstrings with straight leg raising. Reflexes were symmetrical and normal. There were no prasthesias or distal sensory or motor changes. Hips, knees and SI joints all appeared normal. Dr. Miller's diagnosis was acute thoracolumbar spine sprain of a moderate degree. The claimant was started on Valium and Bufferin. He was told this would gradually clear. X-rays of the thoracolumbar spine revealed evidence of "degenerative changes involving the lower thoracic spine with osteophytes anteriorally and to the right." There was no evidence of fracture. Dr. Miller on the 26th of March 1973 noted that the patient continued on his Valium and Bufferin and was given instructions on hyperflexion exercises and told to start doing them. On May 1, 1973 Dr. Miller stated that Mr. Bastien was progressing well on conservative management. He still complained of intermittent mid-thoracolumbar pain. This was aggravated by things such as piveting or lifting. However, in general, Dr. Miller noted the claimant's condition was much improved. His view was that Mr. Bastien's back problem was slowly resolving through his extensive osteoarthritis which would never completely disappear. The claimant was told that he probably should return to work on May 7, 1973. Chest films were taken in the office that day and they revealed a definite osteophytic spike in the foramina between C-5 and 6 on the right side. He also had a sharp spike between the foramina of C-6 and 7. The patient's reflexes were good,

-7-

however, he had a definite sensory deficit over C-6 and perhaps part of C-7". There is clear evidence Dr. Miller stated "of bony pathology in the nerve root outlet and I feel that this patient would probably be a good candidate for neurosurgical decompression of the nerve root at C-6 and perhaps of the C-7 nerve root." The claimant was also noted to have a positive "Adson's (sic) test on the right", however, Dr. Miller felt this was not really his primary problem.

Medical evidence by Dr. Austin R. Leve, pertaining to this second injury suffered by the claimant was contained in a letter dated April 23, 1973 wherein Dr. Leve noted that he examined the claimant in his office on April 11, 1973 at the request of the Employer's Insurance of Wausau. His impression was, "I think this patient has a mild residual partial disability. I told him I thought he had recovered sufficiently to be able to return to work, however, I think he should avoid excessive bending and lifting for a few weeks before he resumes his regular duties." Dr. Leve said, "I see no basis to anticipate any permanency here." X-rays taken on May 31, 1973 at the Genesee Hospital showed a mild tortuosity of the aorta. X-rays taken at the Genesee Hospital on the 4th of June 1973 showed a cervical myelogram with a negative result.

On June 5, 1973 Dr. William W. Kotanch of Rochester reported seeing Mr. Bastian who came to him complaining of similar symptoms which led to his former myelogram. Dr. Kotanch believed that he had little alternative but to repeat myelography. This was performed at the Genesee Hospital on June 3, 1973 as noted above and no significant etiology for his symptoms was found. The study was interpreted as normal. Dr. Kotanch noted that there was no definitive evidence to substantiate any cervical nerve root involvement, though he expected the symptoms to continue to be related to an old carpal tunnel problem.

On June 20, 1973 Dr. Miller stated that he had prescribed Indocin for the claimant. The claimant stated that he had pain which became chronic in nature, but did not radiate to either leg. Dr. Miller believed that the claimant had been back at work without much difficulty. On August 22, 1973

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the claimant was reported by Dr. Miller to have a primary complaint of index finger numbness and occasional shoulder arm pain associated with his old cervical spine injury and osteoarthritis with compression of cervical nerve. Dr. Miller viewed his back problem as being only of a minor annoyance. The claimant, he stated, may resume all his normal activities.

Dr. Della Porta, the Workmen's Compensation Board physician, stated on the 3rd of January 1974 that the claimant sustained a low back injury. The claimant has a "mild partial disability", he concluded, after an examination revealed no muscle spasm or deformity of the back. In another affidavit dated the 15th of April 1974, Dr. Della Porta stated again that the claimant had a mild, partial disability.

On January 14, 1974 Dr. Miller noted that since last seen by him the claimant has suffered intermittent repeated problems with his back, but these had been controlled by medication and by rest. However, it was at this time that the claimant expressed his major problem with employability and at this point Dr. Miller felt the claimant was "permanently disabled" since he lost his job and nobody was willing to hire him at the time. On examination, the claimant continued to exhibit marked limitation of spine motion. Forward flexion at the trunk was limited to about 40 to 45 degrees. Repeat x-rays of the thoracic lumbar area revealed severe degenerative arthritic changes in the thoracic spine, most noticeable from the thoracic levels T-8 to T-12. In this area he had large osteophytes both anteriorly and laterally with some bridging. His view was, "I feel that the patient has some degenerative arthritis and that the injury at R. T. French Company has set off a chain of events which is evidently irreversible. I feel that the patient is totally, and permanently disabled for his previous type of heavy lifting."

On January 3, 1974 Dr. Maggio concluded that the claimant has a mild partial disability in the low thoracic lumbar areas of the back.

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On February 18, 1974 Dr. Miller advised that the claimant appeared in his office on February 4th feeling "generally lousy" and that upon examination Dr. Miller thought that a large sebaceous cyst had become infected and referred Mr. Bastien to Dr. Wolf or Dr. Block for possible drainage. On March 21, 1974 Dr. Miller reported that the large sebaceous cyst was drained. He noted again complaints of back pain, neck pain and lack of neck motion and that these were all essentially secondary to severe degenerative arthritis.

On April 15, 1974 Dr. Maggio, after examination, advised that the claimant had no disability from this accident of February 22, 1973.

On March 15, 1974 Dr. Egel, an orthopedic surgeon from Rochester, New York, writing to Employer's Mutual Insurance Company reviewed the claimant's medical history. After an examination and review of the x-rays (especially the x-ray films of April 1973 which revealed degenerative changes at level C-5, C-6 and C-7, characterized by hypertrophic changes encroaching upon the corresponding intervertebral foramina), Dr. Egel concluded, "I find this patient is having degenerative changes of the cervical spine and in the lower thoracic spine which certainly long antedated his injury of February 1973. I believe that the accident of February 22, did give rise to an aggravation of the pre-existing degenerative changes in the lower thoracic spine and that he did go onto recovery from this aggravation as reflected in Dr. Miller's report of August 22, 1973 wherein he reported that the patient had essentially recovered from his previous injury, that he should experience recurrent episodes of pain in his mid and lower back and his neck is the very nature of an essentially degenerative process and does not, in my judgment, stem solely because of the injury of February 22, 1973. There is no doubt that his degenerative process subject as it to aggravation by stress limits him in job choices, but certainly does not render him as totally disabled." This was the last piece of workmen's compensation evidence, based on his injury of February 22, 1973.

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On May 21, 1974, Dr. D.S. Miller, Jr., wrote that the claimant had a partial disability, secondary to the accident, but in fact he believed that the accident activated and aggravated Mr. Bastien's underlying condition. Dr. Miller concluded by noting that the patient was not totally disabled because of his accident. On June 25, 1974, Dr. Miller had stated: "I feel the patient does have advancing degenerative arthritis and because of this associated with his obesity and what appears to be a bilateral thoracic outlet syndrome he is of all intensive purposes toally disabled. I do not feel he will be able to return to work even if a job is available." Further, he stated: "I feel that his accident at work played only a small part in the prolonged and progressive illness that this patient has. It appeared to be a triggering event, probably rating about 25% of the total disability."

On July 1, 1974 Dr. Miller viewed the claimant as more than 50% disabled. On August 30, 1974, Dr. Miller stated: "I feel he has generalized, progressive, degenerative arthritis and perhaps he should have a more complete work-up by the arthritis unit of Strong Memorial Hospital." On the 9th of October 1974 the Genesee Hospital's Department of Radiology wrote to the New York State Bureau of Disability Determinations concerning x-rays taken of the cervical spine. The impression was discogenic disease of the cervical spine, most marked at the C-6 through 7 and also present at C-4 through 5 and C-5 through 6. X-rays of the dorsal spine showed mild dorsal spine degenerative change of the lumbar spine. There was decreased height at L4 through 5 intervertebral disc space with mild osteophyte formation at this level and also at L3 through 4. Milographic contrast material was present.

Dr. Marvin N. Goldstein (Exhibit No. 19), on October 11, 1974, reported that the claimant appeared for a complete neurological examination and that he walked slowly and stiffly into the office holding his neck tilted to the right. Noting that the claimant appeared to "give way" during an examination of muscle strength, Dr. Goldstein ventured that he could not tell whether this was voluntary or due to pain. The claimant described himself as having total lack of perception of light touch, pinprick and vibration distal to both shoulders and both knees and a glove and stocking like distribution. However, he was able to identify

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numbers written on the skin of his hands. Dr. Goldstein concluded that there was some evidence of spinal arthritis, although he was unable to clearly document the presence of weakness and/or pain. At the time of Dr. Goldstein's examination the claimant was apparently receiving traction, Aspirin and Valium for treatment purposes.

On November 26, 1974, Dr. D.S. Miller wrote that he felt that the claimant had a severe, progressive, degenerative arthritis which is not responding to conservative therapy. He prescribed a new medication, Motrin. He stated that there was very little that he could do for this man. The possibility of doing an anterior disc excision and fusion had been considered, but he did not wish to raise the claimant's hope. (Cf. Exhibit No. 23)

On February 20, 1975 Dr. D.S. Miller reported that Mr. Bastien, when seen on February 17th, was having essentially no problems with his shoulder. His primary problems continued to be that of the spine with stiffness and recurrent pain, associated with weather changes. He does, Dr. Miller reported, have arthritis of the entire spine with limited lower back flexion and limited cervical spine rotation and extension. Dr. Miller noted that a neurosurgeon had worked up this patient and that he felt that his current condition is stable since his last visit to Dr. Miller. He still felt that the claimant remained permanently disabled but Dr. Miller's concern was he did not understand where he will be returning to work in the near future.

WITNESS TESTIMONY

At the hearing before us, the claimant stated that in 1968 while loading potatoes at the R. T. French Company, where he was employed, he suffered an injury and went to the company doctor. He stated his neck was out of shape and the company doctor sent him to the Rochester General Hospital where he was treated by Dr. Leve, with heat treatments and who advised he should no longer engage in heavy lifting. He saw Dr. Leve one more time and then went to Dr. Zinker who gave him vitamins for a vitamin deficiency. At this time he was still working. The claimant then went to a Dr. Fred Gieb for three months and had a negative myelogram. Following a four day stay in the hospital he received therapy at the Highland Hospital, but Dr. Gieb did not know what was wrong with him so he went to see Dr. A. Feldmann. She recommended him to a Dr. Roger Miller, who admitted him to the Rochester General Hospital. At this time

he states he had the use of his hands which caused him to be out of work from six to eight weeks. He then went back to Dr. Feldmann. During this period he worked "on-and-off" as a truck driver, but had the same trouble again and had to take medication. On February 22, 1972 he had a sharp pain in the back and he went to the Genesee Hospital where he was given a pain killer. According to the claimant it was here that Dr. D.S. Miller, Jr., and another doctor performed a myelogram and gave him prescriptions and medications. A cyst appeared and Dr. Wolf removed this. The claimant then made an appointment to see Dr. D.S. Miller in the future. Drugs were given for arthritis and Valium was given for muscle spasm according to the claimant. The claimant also said that he had had high blood pressure and had a prescription from Dr. Frank Cannon, his own doctor. The claimant is overweight, his weight fluctuated from 190 to 205 pounds over a period of years.

The claimant's employer, the R. T. French Company moved to Springfield, Missouri in 1973. He received severance pay based upon the union contract. For this employer he had operated a fork lift on a platform and handled heavy drums, 700 to 1,200 pounds; however, he received help with the heavy drums from fellow employees. Previously, he worked for eight years as a "checker" on the docks checking-off freight before it was loaded on a truck. Before this he spent three years picking orders and before that four years "pulling", along with other employees, box cars that were loaded and which weighed, when pulled, 90,000 to 100,000 pounds. Before this time he worked on the "mustard line" packing 47 pound cases of mustard jars. He spent nine years, two months and 17 days as a cook in the U.S. Army, but received no special training in the Army.

The claimant stated he received no pension or award from the Veterans Administration nor did he receive Veterans Administration benefits, based upon any disability. He stated, in fact, that that very morning he had spoken to Veterans Administration representatives and that his pending claim was refused until action was completed by the Social Security Administration.

The claimant further stated that on February 22, and April 23, 1973 he had been injured while working for the R. T. French Company, but did not leave his work until he was severed out by the R. T. French Company on June 29, 1973. He went to the Office of Vocational Rehabilitation and applied for work there and worked for four days, but was given two weeks notice since he had confessed at a physical that he was disabled. He stated that for these four days he was constantly bending and stooping and "just couldn't take it."

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The Office of Vocational Rehabilitation then found him a job nights and working overtime which involved little bending or lifting and he worked from November 5, 1973 through January 14, 1974, which was his last working day. The employer at this time told him they "did not want to take a chance again." He then filed for unemployment insurance. The New York Workmen's Compensation Board at that time wanted another medical examination and he went to Dr. Miller for x-rays and tests at the hospital, where he was advised that he was "100% disabled for Social Security purposes". At this point he felt that he had to check back with the unemployment insurance people and notify them that he could not be employed again. He is receiving \$43.43 a week from workmen's compensation.

He now drives, but does not go far since his back gets tired. The farthest he drives is to Lyons, New York, 33 miles away; he makes no trips in excess of 75 to 100 miles.

He testified he could not work due to complications from his condition. He could not even cut the hedges or hold things in his hand. He cited an incident at home wherein he dropped his coffee cup as if he could not hold or grasp anything in his hands and a force had opened his hand. The only thing he could do, he stated, was to guide an electric lawnmower while his wife and son raked up the grass. He hires boys to clear his driveway in the winter. He stated that he still cannot stoop over and he goes to the ground on one knee. He can't twist his neck. At the hearing he offered to go for acupuncture if that would help him get a job.

DISCUSSION AND FINDINGS

After careful consideration of the entire record, the Administrative Law Judge makes the following findings:

The claimant filed an application for a period of disability and for disability insurance benefits on January 21, 1974, alleging disability from June 29, 1973.

The claimant met the special earnings requirements of the Social Security Act, as amended, on June 29, 1973, the date of alleged "disability", and continues to meet them through to the present.

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The claimant testified he was born on November 5, 1920 and completed eight years of schooling, and has worked as a checker in a spice manufacturing concern for five years (1966 - 1971). The record reveals he was a janitor and laborer, also.

While the claimant alleges impairments involving arthritis in the back and hands, the evidence of record fails to establish these impairments to be at a level which would significantly interfere or prevent him from engaging in his former work activity for a continuous period of not less than 12 months.

The claimant is found not able to do heavy labor or work which requires regular bending, heavy lifting, constant stooping, long standing or walking for extended distances and periods, but he is able to function otherwise in a normal manner both mentally and physically.

1. PRE-1973 INJURY

The weight of the evidence before me relating to injuries suffered before February 22, 1973, indicate that the claimant would not be entitled to a period of disability based upon his injury suffered on May 21, 1968. His application, Exhibit No. 1, indicated that he alleges an onset date of June 29, 1973 and thus did not request a retroactive consideration of this prior injury. However, it should be noted that the opinions of several physicians, notably Dr. Leve and Dr. Gieb, reinforce the view that the claimant continued to work without severe impairment to his functioning. While it is true that Drs. Della Porta and Maggio recognized a RCG disability in regard to the use of his right hand, they viewed that to be a minimal and partial impairment. Even doctors of his own choosing, such as Dr. Feldman, urged the return to work of this claimant four months after a corrective operation. Thus, the claimant's impairment in the pre-1973 period cannot be viewed as a "disability" under the Social Security Act.

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2. As to Mr. Bastien's Second Injury (February 22, 1973) -- The weight of the medical evidence clearly is contrary to the conclusions held by Dr. D. Sewall Miller, Jr., i.e., the view that Mr. Bastien is "totally disabled" due basically to the effects of arthritis. The variations in Dr. D.S. Miller's own diagnoses appears quite puzzling, e.g., he noted four months after the injury that the claimant was back at work without much difficulty, and in August of 1973 he believed the claimant's back problem was quite minor. However, it was in August of 1973, upon the urgings of the claimant, that another element entered Dr. D.S. Miller's opinions, viz. concern over the claimant's employability. On May 21, 1974, Dr. D.S. Miller sought other theories of aggravation and stress which would account for the influence of Mr. Bastien's underlying condition; however, even at that time he was not thoroughly convinced that Mr. Bastien was totally disabled. By June 1974 he changed his opinion and advised that "degenerative arthritis" combined with obesity and a bilateral thoracic outlet syndrome caused the claimant to be unable to work; his accident was viewed as being the triggering event of 25% of the disability. It seems that Dr. D.S. Miller was influenced by the urgings of the claimant, i.e., he seemed to base his opinions upon a 25% partial impairment and a consideration that the rest was based upon employer's reluctance to hire the claimant.

Hard medical evidence, after thorough examinations, is available to sustain a finding that the back problem in and after 1973 was not disabling under the Social Security Act.

Dr. Austin R. Leve noted two months after the 1973 injury that the claimant had a "mild residual partial disability", and told Mr. Bastien that he could return to work. He noted the claimant could return to his regular work, after a "few weeks" of avoiding excessive bending and lifting. Dr. Leve concluded, "I see no basis to anticipate any permanency here." Dr. Maggio, supra, noted in January of 1974 that the claimant had a mild partial disability, but in April stressed that the claimant had no disability from the accident of February 22, 1973.

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Dr. Egel, a Rochester orthopedic surgeon, noted that the claimant was having "degenerative changes" of the cervical and lower thoracic areas, but that he certainly was not totally disabled. On October 11, 1974 Dr. Marvin N. Goldstein, supra, performed complete neurological examinations and found that there was some evidence of spinal arthritis, but could not clearly document the presence of the weakness and pain. The claimant's ability to "give way" during the examination raised some questions in the doctor's mind about the nature of the claimant's impairments.

While it is true that the claimant's work record has been excellent, and his testimony is consistent with documentary evidence of record which indicates he has earnestly sought employment despite his impairments, it is the Administrative Law Judge's findings that the claimant has not presented evidence upon which to grant his claim for a period of disability and disability insurance benefits.

In reaching our conclusion we have carefully considered the claimant's subjective symptoms of pain, the various possible explanations of that pain, the totality of claimant's impairments, including pain, treatment and remediability, giving due consideration to the various medical diagnoses and the ability of the claimant to perform specific types of work assuming various levels of functional limitations and/or pain. The claimant's allegations as to the degree of pain experienced are not supported by the weight of evidence and the claimant's testimony on this point cannot be given full weight. The subjective symptoms are inconsistent with the weight of the medical evidence of record. Some degree of pain is recognized, but found not to exceed a mild to moderate degree which we find would not direct attention from the duties of a job and which could be significantly relieved by oral medication. The pain experienced is found not to be of such a degree as to incapacitate the claimant from doing work of a competitive nature for which the claimant would be qualified by reason of age, education, training and work experience.

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Considering the established impairments, along with their functional limitations and giving appropriate weight to the claimant's age, education, training and work history, it is the Administrative Law Judge's findings that he would not be able to do his customary work as a laborer, however, he could do jobs of a light and sedentary nature such as a checker similar to that which he did in the past and that these jobs are present in significant numbers in the region where the claimant lives and in several regions of the country.

The opinion as to the claimant's disability expressed by Dr. D. Sewall Miller, Jr., is noted and given consideration, but is not found controlling on the issue of "disability" under this Act. The Secretary, in his Regulations No. 4, section 404.1526, provides "the function of deciding whether or not an individual is under a disability is the responsibility of the Secretary. A statement by a physician that an individual is, or is not, 'disabled', 'permanently disabled', 'totally disabled', 'totally and permanently disabled', 'unable to work', or a statement of similar import, being a conclusion upon the ultimate issue to be decided by the Secretary, shall not be determinative of the question of whether or not an individual is under a disability. The weight to be given such physician's statement depends on the extent to which it is supported by specific and complete clinical findings and is consistent with other evidence as to the severity and probable duration of the individual's impairment or impairments."

Repeated reference in the medical evidence is directed to whether the claimant's back problems could be attributed to the 1973 injury. Causal relationship is not a factor which can or should be considered in determining whether an individual is under a disability within Title II of the Social Security Act. It matters not whether the problem was created by an industrial accident or due to other causes. The sole issue here is whether the impairment is severe enough to constitute a "disability" under sections 216(i) and 223 of the Social Security Act.

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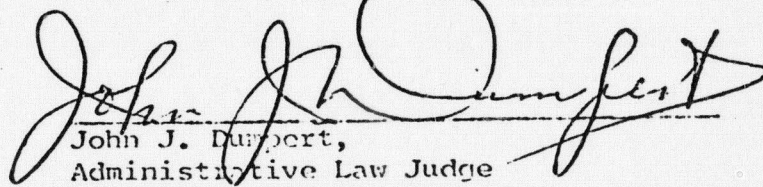
The claimant's impairments, individually and collectively, including pain, are found not of a level of severity to preclude the claimant from engaging in any substantial gainful activity, nor can they be deemed to be the equivalent in severity of the impairments in the Listings of Impairments, Subpart P of the Social Security Administration's Regulations No. 4, section 404.1502(a) and 404.1506

The claimant's impairments, individually or collectively, taking into consideration age, education, training and experience have not prevented him, in fact, from engaging in any substantial gainful activity for any continuous period beginning on or before the date of this decision, which has lasted or could be expected to last for at least 12 months. (Regulations No. 4, section 404.1502(b))

The claimant was not under a "disability", as defined in Title II, section 216(i) and 223 of the Social Security Act, as amended, on June 29, 1973, as alleged, or at any time on or prior to the date of this decision.

DECISION

It is the decision of the Administrative Law Judge, based on the application filed January 21, 1974 that the claimant is not entitled to a period of disability or to disability insurance benefits under section 216(i) and 223 of the Social Security Act, as amended.


John J. Dumbert,
Administrative Law Judge
Room 550 - 1 West Genesee Street
Buffalo, New York 14202

Date: October 10, 1975

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DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS

41

WAIVER OF ADVANCE NOTICE OF HEARING

In the case of

Claim for

Lionel J. Bastien

(Claimant)

Period of Disability and
Disability Insurance Benefits

079-16-5221

(Social Security Account Number)

(Wage Earner)

I have been advised of my right to receive notice of the time and place of hearing in my case 10 days in advance of the date set for such hearing. I hereby waive the right to receive such advance notice and elect to proceed with the hearing as soon as it may be scheduled.

Lionel J. Bastien
(Signature)

628 Garson Avenue

(Street Address)

Rochester, New York 14609

(City, State, and ZIP Code)

716 288 8216

(Telephone Number)

Date: February 5, 1975

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS

NOTICE OF HEARING

42

In case of

Claim For

Lionel J. Bastien

(Claimant - Wage Earner)

Period of Disability and

Disability Insurance Benefits

079-16-5221

(Social Security Number)

TO: **Mr. Lionel J. Bastien**
628 Carson Avenue
Rochester, New York 14609

Pursuant to your written request and provisions of section 205(b) of the Social Security Act, a hearing will be held by the undersigned, an Administrative Law Judge of the Bureau of Hearings and Appeals, on the 5th

day of Feb. 1975 at 1 pm o'clock in Room 403 of Federal Building,

100 State Street

(Number and Street)

Rochester,

(City)

New York

(State)

The general issues to be determined are whether you are entitled to a period of disability under section 216(i) and to disability insurance benefits under section 223(a).

The specific issues to be decided are: (1) Whether you have the required insured status under the law; and if so, as of what date(s); (2) The nature and extent of your impairments; (3) Whether your impairment has lasted or can be expected to last for a continuous period of at least 12 months, or can be expected to result in death; (4) Your ability to engage in substantial gainful activity since your impairment began; (5) When your disability, if any, began.

This hearing involves your application(s) filed on January 21, 1974

(Date)

You should be prepared to prove that you were under a disability on or before February 5, 1975

(Date)

may be to your interest to have your physicians appear at the hearing to testify on your behalf. Be prepared to furnish: your entire work history, including names of employers, dates of employment and a description of duties performed; schools and training; names of physicians who have examined or treated you; and periods of hospitalization with names of hospitals.

REMARKS: It is noted in our telephone conversation today, you waived your 10 days advance notice of hearing and agreed to appear at the above specified time.

IMPORTANT-Please sign and return at once the enclosed postal card notifying me whether you will be present at the above time and place. No postage is required on this card.

Administrative Law Judge

John J. Dumpert **John J. Dumpert**

Mail Address

Bureau of Hearings and Appeals
Room 550 - 1 West Genesee Street
Buffalo, New York 14202

Date

January 29, 1975

Telephone Number

716 842 3404

cc: Representative (Name and Address)

District Office (Address)

100 State St., Rochester, New York

Enclosure

READ THE OTHER SIDE OF THIS NOTICE FOR FURTHER INFORMATION REGARDING YOUR HEARING

FORM HA 507.1
(9-72)

HEARING FILE

(Over)

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IMPORTANT INFORMATION

What is Meant by "Disability"

To be found under a "disability", an individual must be unable to engage in any substantial gainful activity due to a medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous period of at least 12 months, or can be expected to result in death. The impairment must be so severe as to prevent the individual from engaging not only in his usual work, but, considering his age, education, previous training and work experience, in any other kind of substantial gainful work which exists in significant numbers either in the region in which he lives or in several regions of the country.

Appearance At Hearing

The date and time of this hearing have been set aside especially for you. Your failure to appear without good reason may cause dismissal of your Request for Hearing. Even though there is good reason, any postponement will delay disposition of your case. If an emergency arises preventing your appearance after you mail the postal card stating that you will be present, notify the Administrative Law Judge promptly and give your reasons. Also indicate the earliest date after which your case can be re-scheduled for hearing.

Conduct of Hearing

The law places on you the burden of submitting evidence to support your claim. Bring to the hearing all evidence not already presented in your case.

You will have an opportunity to examine the documentary evidence on the day of the hearing. If you wish to examine it before the day of the hearing you may do so at the hearing office.

At the hearing the Administrative Law Judge will inquire fully into the matters at issue. You may present evidence either in the form of written documents or the testimony of witnesses, or both. Your testimony and that of any witnesses will be under oath or affirmation, and a verbatim record of the proceedings will be made. You may suggest findings of fact or conclusions of law and present arguments orally or in writing.

Representation

While it is not required, you may be represented at the hearing by an attorney or other qualified person of your choice, if you desire assistance in presenting your case. Any fee which your representative wishes to charge for his services in your case must be approved by the Bureau of Hearings and Appeals. Your representative must petition for fee approval at the conclusion of his services, and furnish you with a copy of his petition.

If you are found entitled to benefits and your representative is an attorney, 25 percent of your back benefits will normally be withheld for payment to your attorney upon approval of his fee. If the approved fee is less than the 25 percent withheld, the difference will be paid directly to you. If the approved fee is more than 25 percent, payment of the difference is a matter to be settled between you and your attorney.

If your representative is not an attorney, none of your benefits will be withheld; and payment of the fee which is approved is a matter to be settled between you and him.

If you have any other questions, your local Social Security office will be glad to help you.

REQUEST FOR HEARING

Take or mail original and all copies to your local Social Security office.

DEC 19 1974 44

CLAIMANT'S NAME LIONEL J. BASTIEN	CLAIM FOR (Check one or more boxes) (Circle type of claim) ☒ Entitlement to Disability Benefits (DIB) DWB CDB
WAGE EARNER'S NAME (Leave blank if same as above)	☐ Continuance of Disability Benefits DIB DWB CDB
SOCIAL SECURITY NUMBER 079-16-5221	☐ Other (Specify) _____
SPOUSE'S NAME AND SOCIAL SECURITY NUMBER (Complete <u>ONLY</u> in Supplemental Security Income Case)	☐ Supplemental Security Income Aged Blind Disabled
	☐ Continuance of Supplemental Security Income Aged Blind Disabled

I disagree with the determination made on the above claim and request a hearing before an administrative law judge of the Bureau of Hearings and Appeals. My reasons for disagreement are:

I am unable to do any work.

Check one of the following:

- ☐ I have additional evidence to submit.
Evidence to this form or Social Security Office
()
☒ I have additional evidence to submit.

Check ONLY ONE of the statements below:

- ☒ I wish to appear in person.
☐ I waive my right to appear and give evidence, and hereby request a decision on the evidence on file.

Signed by: (Either the claimant or representative should sign. Enter addresses for both. If claimant's representative is not an attorney, complete Form SSA-1696.)

SIGNATURE OR NAME OF CLAIMANT'S REPRESENTATIVE ☐ ATTORNEY ☐ NON ATTORNEY	CLAIMANT'S SIGNATURE <u>Lionel J. Bastien</u>
ADDRESS	ADDRESS 628 GARSON AV.
CITY, STATE, AND ZIP CODE	CITY, STATE, AND ZIP CODE ROCHESTER NY 14609
TELEPHONE NUMBER	DATE: 11/21/74 (Claimant should not fill in below this line)
	TELEPHONE NUMBER 716-288-8216

TO BE COMPLETED BY SOCIAL SECURITY ADMINISTRATION

Is this request timely filed? ☒ Yes ☐ No

If "No" is checked: (1) Attach claimant's explanation for delay, (2) Attach any pertinent letter, material, or information in the Social Security Office.

ACKNOWLEDGMENT OF REQUEST FOR HEARING

Your request for a hearing was filed on 11/21/74 at Rochester NY
The administrative law judge will notify you of the time and place of the hearing at least 10 days prior to the date which will be set for the hearing.

HEARING OFFICE COPY	TO: ☒ Hearing Office <u>Buffalo NY</u> (Location) ☐ (Claims Involving Supplemental Income only, combined SSI-RSDI) (Location) ☒ Supplemental Security Income File Attached	For the Social Security Administration By: <u>Esposito</u> <u>CU</u> (Signature) (Title) <u>Federal Building</u> (Street Address) <u>Rochester NY 14614</u> (City) (State) (Zip Code)
CLAIMS FILE COPY	TO: ☒ Hearing Office ☐ Claim File(s) Requested by Teletype to <u>BDI</u> ☒ ACB (BDP) (Location)	
Interpreter Needed _____ (Language)		Servicing Social Security Office Code <u>108</u>

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS

TRANSCRIPT

In the case of

Lionel J. Bastien

(Claimant)

Claim for

Period of Disability and
Disability Insurance Benefits

079-16-5221

(Wage Earner) (Leave blank if same as above.)

(Social Security Number)

Hearing Held

at

Rochester, New York

on

February 5, 1975

APPEARANCES:

Lionel J. Bastien, Claimant

John J. Dumpert
Administrative Law Judge

Doris Bartlett
Hearing Assistant

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C O N T E N T S

In the case of
Lionel J. Bastien

Account Number
079-16-5221

Testimony of
Lionel J. Bastien

Page

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(1 (The following is a transcript of the hearing held before
2 John J. Dumpert, an administrative law judge of the Bureau
3 of Hearings and Appeals, Social Security Administration,
4 Department of Health, Education, and Welfare, on February 5,
5 1975, at Rochester, New York, in the case of Lionel J. Bastien,
6 claimant in his own behalf and based on his earnings record,
7 social security account number 079-16-5221. The claimant,
8 Lionel J. Bastien, appeared in person.)

9 (The hearing commenced at 1:00 p.m., on February 5,
10 1975.)

11 OPENING STATEMENT BY ADMINISTRATIVE LAW JUDGE:

12 Let this hearing come to order. Please, note the
13 appearance of Mr. Lionel Bastien, the claimant in this case.
14 Mr. Bastien, did you know that you had a right to have some-
15 one here to represent you if you so desired?

16 MR. BASTIEN: Yes, I did.

17 ALJ: I want to tell you something about our hear-
18 ings, and the law and the issues that are involved. We have
19 -- but first, we have a repairman in this room at the present
20 time. Do you want to go ahead with this hearing or wait un-
21 til he's finished with his job?

22 MR. BASTIEN: It's immaterial to me, sir.

23 ALJ: With your permission then, we'll go ahead.
24 with this.

25 Where a man files a claim for disability insurance
benefits under the social security application, he has a right
to a hearing if he requests one. You did, and this is your
hearing under section 205 of the Social Security Act. Hear-
ings under this act are not formal in the sense of a regular

1 court. We do not follow any particular procedure but there
2 are regulations and rules found in the Code of Federal Regu-
3 lations and the Federal Administrative Procedure Act which
4 we must pay attention to and we must respect. Don't worry
5 about them. I'll see that they're observed. We may also
6 accept into the hearing record, evidence in a form which the
7 more formal courts might not accept. As far as you're con-
8 cerned, this merely means don't hold back anything which you
9 think has some bearing on your claim. You should tell me or
10 show me if it's in, by way of documents, anything which you
11 think has some importance. Let me be the judge of whether
12 it's admissible.

13 You have the right to an opening and a closing
14 statement. You have the right to argue this matter orally
15 or in writing. And, you have the right to submit oral or
16 written findings, a fact or conclusions of law, which you
17 propose that the judge accepts as a fact of law in this case.
18 I will not reach a decision today. My decision has to be
19 in writing under the regulations of the secretary. You'll
20 receive a copy of it. My decision need not necessarily be
21 the same as that which the Social Security Administration
22 made previously when it denied your claim. I have to take
23 into consideration all of the evidence presented to me and on
24 that basis, I will then come to some decision whether you were
25 under a disability and entitled to benefits under the act.

1 Where -- the record before me shows that on Jan-
2 uary 21, 1974 you filed a claim for disability insurance
3 benefits under sections 216(i) and 223 of the Social Security
4 Act. The first section gives you the freeze of wages if
5 you're under a disability. The second section gives you the
6 monetary benefits if you're under a disability. The ad-
7 ministration denied the claim on February 20, 1974 and then
8 you asked them to reconsider their decision. They did so on
9 November 14, 1974. They again notified you that on the basis
10 of the evidence before them, they believe that you were not
11 under a disability and that your impairments, considered in-
12 dividually or collectively, were not severe enough to prevent
13 you from engaging in some -- in, in any substantial gainful
14 activity, or some form of work which you had done in the past.

15 You, of course, took this appeal and we now have
16 jurisdiction over the matter. Where a claim for disability
17 is filed, the two sections that I mentioned before become im-
18 portant. Both sections define that disability as the inabil-
19 ity to engage in any substantial gainful activity by reason
20 of any medically determinable physical or mental impairment
21 which can be expected to result in death, or which has lasted
22 or can be expected to last for a continuous period of not less
23 than 12 months.

24 This means, if we were to rephrase it, that a per-
25 son has to have a physical or a mental problem. That problem

1 has to be medically determinable. It has to be not of short
2 duration and it has to prevent the individual from engaging
3 in not only his former work but any work which by reason of
4 his age, education, training and experience, he might be
5 found capable of doing. And finally, of course, as I've
6 pointed out before, it cannot be temporary in nature. It has
7 to last for the 12 months' period that we mentioned pre-
8 viously.

9 Another thing that has -- you should know, is that
10 you were especially insured for disability purposes at the
11 time that you last worked. You continue to be insured now
12 and you will be insured until sometime in the future, namely
13 December 31, 1978, even if you do no work between now and
14 then. So, the only problem that you do have is to establish
15 that you are under a disability and when that disability be-
16 gan. Otherwise, you qualify in all respects.

17 Now prior to the -- first of all I want to ask you
18 whether you have any questions you want to ask me regarding
19 anything I just told you.

20 MR. BASTIEN: I understood everything.

21 ALJ: I can't hear you, sir.

22 MR. BASTIEN: I said, I understood everything.

23 ALJ: Thank you, Mr. Bastien. Before this hearing,
24 I showed you a number of papers which I thought were important
25 to this claim of yours. I took them from the file which the

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1 Social Security Administration maintains for you and in your
2 name. You also gave me a letter from Dr. Miller, dated
3 November 26, 1974, which I have marked for identification
4 as Exhibit 23. Now, did you have an opportunity to examine
5 these papers?

6 MR. BASTIEN: Yes I did, sir.

7 ALJ: Did you read them?

8 MR. BASTIEN: To the best of my knowledge -- I mean
9 there's words there I didn't know the meaning of. Medical
10 words.

11 ALJ: Did you read them to the best of your ability?

12 MR. BASTIEN: Yes, sir.

13 ALJ: Is there anything that you would want me to
14 help you on or to have you -- explain to you at the present
15 time?

16 MR. BASTIEN: No, sir.

17 ALJ: Do you have any objection to having these
18 papers put in the hearing record to form part of the evidence
19 on which I have to come to some decision?

20 MR. BASTIEN: No objection, sir.

21 ALJ: The papers marked for identification as Ex-
22 hibits 1 to 23 are admitted. I told you before, you have the
23 right to an opening statement. By that, you can present your
24 case to me as you see fit. Then, I want to ask you some
25 questions. I'll swear you in and ask you a few questions that

1 I have on my mind. Do you want to tell me something now?

2 MR. BASTIEN: Well, I could explain from the day I
3 got hurt on. Is that what you mean?

4 ALJ: Why don't you do that.

5 MR. BASTIEN: Well, in 1968 I was loading cars at
6 the R. P. French Company where -- loading potatoes way above
7 our heads from the height of a boxcar. I injured myself and
8 I had to go see the company doctor, I forgot his name, but I
9 reported to the nurse. And then I went up and saw Lloyd
10 Levy (phonetic) and my neck was way over to one side and I
11 couldn't straighten it out. And, he sent me up to Rochester
12 General, I think the one on Portland Avenue, is that what
13 they call it? And, they took X-rays of me and two men had
14 to help me on the table so they could take X-rays of it.
15 Well, then I went back to Dr. Levy and he gave me heat, heat
16 treatments and, gee, I don't know how long -- for how many
17 weeks it was -- I couldn't give you the exact dates or any-
18 thing like that. Well, then finally he released me to go
19 back to work with no heavy lifting or anything you know in
20 that posture. Then later on I had to go back to him again.
21 So, I asked him if I could go to see another doctor. He said
22 yes. So I went to see Dr. Zinker (phonetic).

23 And, he examined me and asked me a lot of questions
24 and everything like that. And, he put me on a yeast diet --
25 two cakes of yeast a day for 30 days. He says I was lacking

1 Vitamin D, D or E. So at the end, I went back and he re-
2 leased me. He didn't help me out either. So, well I was
3 working at the time when I was at Dr. Zinker. I was taking
4 those yeast cakes, but I was working. Then it bothered me
5 again so I went and seen Dr. Guy (phonetic). Well, he put
6 me in the Highland Hospital and he took a mimeogram (phonetic)
7 of my back and it showed negative. I was in the hospital
8 for four days. Then, later on he gave me therapy treatments,
9 stretching my neck at the Highland Hospital and that didn't
10 help any so I, I advised him, I said, why spend money when
11 it doesn't help. He said, I guess you're right. So I asked
12 him what was wrong with me and he couldn't tell me. He said,
13 I don't know. He wouldn't tell me anything.

14 ALJ: Well, what doctor sent you to the Highland
15 Hospital?

16 MR. BASTIEN: Guy, Dr. Frank Guy I think.

17 HEARING ASSISTANT: (Inaudible).

18 ALJ: Will you proceed then.

19 MR. BASTIEN: So, I went to him for three months,
20 I think -- three months I'm not sure. And, he couldn't help
21 me out so I went and seen a nerve specialist, Dr. Alexander
22 Feltman (phonetic), 1501 East Avenue and she gave me a pre-
23 scription for medication. She examined me good. She put
24 those electric device on my hands and my arm, and finally she
25 recommended a doctor for me to see, Roger Miller. And, I was

1 admitted at the hospital in October of, I think it was, '71.
2 Yeah, '71 -- in October of '71.

3 ALJ: What hospital was this?

4 MR. BASTIEN: Rochester General, up on Portland
5 Avenue. And, I had an operation on my hand, to relieve the
6 pressure. I had lost the use of my hand. I didn't have no
7 strength or nothing. And, finally the -- some kind of a
8 tunnel, they put a tunnel in there. And, I was out for about
9 another 6 to 8 weeks. They finally released me to work or
10 back to Dr. Feltman. I was under her care for a couple of
11 weeks and then she released me to go back to work. And, I
12 started gaining the use of my hand and my arm. And, I worked
13 for a while and it started bothering me again. And, one day
14 I was out with a truck-driver out, and helping throw
15 in the air, and the truck you know is 10 high. And, it
16 caught me again. So, I went back to her and took more medi-
17 cation and was off for a while. Then I went back to work.
18 And, then in 19 -- was it '72 -- yeah, 1972 -- in February,
19 it was February 22nd. of '72, the boss and I and another man
20 was pulling a cabinet off the wall that was anchored. I felt
21 a sharp pain in my back, so he told me to go to the emergency
22 at Genesee Hospital, which I did. And, they took X-rays
23 and the doctor found something in my X-rays and he gave me
24 some Perdonna (phonetic), a pain-killer. And, he recommended
25 that I see Dr. Saul Miller (phonetic), Jr. because he had seen

1 something on the X-rays which he saw. I made an appointment
2 to see Dr. Miller and since then he's been my physician. He
3 took quite a few X-rays of me. This is how he found out
4 about my conditions.

5 So, he then contacted Dr. Kopez (phonetic) and
6 he admitted me here to the Genesee Hospital and they gave
7 me another myelogram. And, I was in the hospital for four
8 days. I overstayed one day on account of I couldn't move out
9 of bed the first day, so I stayed one more day and I felt
10 better. And, ever since then I've been going back to Dr.
11 Miller for X-rays and medicine, prescriptions, medications.

12 And, in the meantime I had a big cyst on my back.
13 And, while I was visiting Dr. Miller he noticed it started
14 turning purple. So right away he shot me up to Dr. Wolfe
15 (phonetic) at the Genesee Hospital and Dr. Wolfe -- I went
16 and seen Dr. Wolfe and right away he put me on an operating
17 table. He removed a cyst that was infected and he put a sac
18 in there and then I had to make two more treatments -- I had
19 to go back to see him twice and then it was all right. And, I
20 have to see Dr. Miller February 17th., at 9:45. He put me on
21 a new medication.

22 ALJ: What are you taking now?

23 MR. BASTIEN: Let's see, they forgot to label this.

24 ALJ: Well what -- tell me why do you think you're
25 taking -- what, what good it's doing you or --

1 MR. BASTIEN: It's --

2 ALJ: -- what's it for?

3 MR. BASTIEN: It's for my arthritis. And, then
4 I'm taking Valium for muscle spasms and I was taking --
5 then I contracted high blood pressure and I was -- I'm taking
6 high blood pressure pills. Then I had a touch of sugar, but
7 that's okay now, that's down. That was with my doctor,
8 family doctor, Sanford Brenchano (phonetic), Orville Road
9 (phonetic).

10 ALJ: You're a bit overweight too. Are, are they
11 treating you for that?

12 MR. BASTIEN: I've been, I've been like this for
13 years. I fluctuate between 190 and 205. You know it's pretty
14 tough to see a doctor, you've got to see him -- you've got
15 to pay him cash on the line before he takes you in the office.

16 ALJ: Well, is Dr. -- is the workmen's compensation
17 paying any of these bills?

18 MR. BASTIEN: Well, they paid most of them and I'm
19 getting \$43.43 a week. And, my wife and I can't live on
20 that.

21 ALJ: Is that the only income that you have now?

22 MR. BASTIEN: That's the only income I have, yes
23 sir.

24 ALJ: Do you have any papers indicating what your
25 workmen's compensation number is?

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MR. BASTIEN: Yes, sir. (Inaudible)

ALJ: Go ahead. Let the record show that Mr. Bastien presented a C8 form. A notice that payment of compensation for disability has been stopped or modified, showing that the -- his workmen's compensation number was, is 77302530. We will make this part of the hearing record as Exhibit No. 24.

You can continue to stand if you want to. There is no reason why you have to sit at this hearing if that gives you more relief.

MR. BASTIEN: Well, that -- (inaudible)

ALJ: Well, you can stand in front of it and just move around. You do as you please though, sit if it's more comfortable or stand if it's --

MR. BASTIEN: All right. As long as I can relieve the pressure there. I have to continue, see day in and day out and disturbed during the night I get up at 2:00 o'clock in the morning, 3:00 o'clock in the morning. I'm taking all sorts of medications, and I just seem to have that, them pains they just don't want to go away. Now it's starting to come in my thighs and in my knees.

ALJ: Prior to this hearing, you pointed out to me that while your wage record shows earnings of \$10,000 or more \$10,800. Very little of that was for wages but a whole lot of

1 \$9,554 as best you can remember, was as --

2 MR. BASTIEN: Severance pay.

3 ALJ: -- severance pay. Tell me about that --
4 why were you entitled to severance pay?

5 MR. BASTIEN: We were all on severance pay. It
6 was in our contract see.

7 ALJ: Did the company go out of business?

8 MR. BASTIEN: They moved to Missouri, Springfield,
9 Missouri. But, they're still located at 1 Mustard Street.
10 They didn't take any of their former employees but only
11 supervisors.

12 ALJ: When did they move?

13 MR. BASTIEN: Sometime in '73.

14 ALJ: Did your --

15 MR. BASTIEN: They built a twelve million dollar
16 plant down there.

17 ALJ: Did your job -- did you -- were you out of
18 work before they moved? Or did you work up until the time
19 they broke up this plant?

20 MR. BASTIEN: They kept a skeleton force. They
21 kept terminating us as we -- you know by seniority.

22 ALJ: So you lost your job primarily because of
23 the move of the plant from this area to Missouri and your
24 job was terminated when you, your turn came up in seniority?

25 MR. BASTIEN: I, I had a good job there. I mean I

1 had a lot of help. I had a good boss. Anytime there was
2 anything heavy or anything like that, he'd supply a jeep
3 driver or a man to help me. We do have good and we do have
4 some bad ones.

5 ALJ: What did you do for this company?

6 MR. BASTIEN: I operated a forklift on a platform
7 quarterpicker. I used to handle 700 pound drums, 500 pound
8 drums.

9 ALJ: By the forklift?

10 MR. BASTIEN: I, well I moved the pilot right
11 up in the air, it moved 15 or 20 feet in the air. And then
12 I'd slide them on. See, I'd slide -- all but the heavy ones
13 I'd get a couple of friends of mine to put the heavy ones on
14 for me.

15 ALJ: How long had you worked at that job, operating
16 the forklift?

17 MR. BASTIEN: Well, I was forced by the union to
18 take, accept that job.

19 ALJ: How long had you worked at it?

20 MR. BASTIEN: About a year.

21 ALJ: What did you do before that time?

22 MR. BASTIEN: I was a checker on the docks.

23 ALJ: Now, what does a checker on the docks do?

24 MR. BASTIEN: Well, the R. P. French Company is about
25 the only company in Rochester that did what we did. I checked

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1 all the freight before it was loaded on the truck.

2 ALJ: Now, when you say you checked it, I don't --

3 MR. BASTIEN: I had to write --

4 ALJ: -- know whether you had a piece of paper in
5 your hand --

6 MR. BASTIEN: Right, on a pad, on a board.

7 ALJ: -- and you would see that the numbers cor-
8 responded --

9 MR. BASTIEN: I'd --

10 ALJ: -- so the right stuff would go on the truck.

11 MR. BASTIEN: Right.

12 ALJ: Would you have to move the, the material?

13 MR. BASTIEN: I had an electric walkie. I would
14 take it, put it onto the pilot, and then run it in to the
15 truck and the truck driver would unload it.

16 ALJ: How long had you worked at that job?

17 MR. BASTIEN: Well, I'd say about 8 years.

18 ALJ: What did you do before that?

19 MR. BASTIEN: I picked orders. I used to assemble
20 the orders on the pilot and put them in the to be
21 checked. I didn't have an electric then. I had one of those
22 you pulled right along you know.

23 ALJ: I think I -- you'd hoist it up and --

24 MR. BASTIEN: Raise the pilot --

25 ALJ: -- and then you'd raise the pilot an inch or

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1 so up off the ground?

2 MR. BASTIEN: Right.

3 ALJ: Off the floor and then pull it by --

4 MR. BASTIEN: Pull it by hand.

5 ALJ: -- brute force.

6 MR. BASTIEN: Right.

7 ALJ: Now when you say you pick orders, do you mean
8 you got an order sheet from some source which told --

9 MR. BASTIEN: (Inaudible)

10 ALJ: -- which told you what to get from the stock
11 room or any other place --

12 MR. BASTIEN: Right.

13 ALJ: And then you brought this pallet over there, put
14 the stuff on the pallet and brought the pallet to where?

15 MR. BASTIEN: To the marshalling area. It might be
16 5000, I mean 500 feet, 1000 feet.

17 ALJ: The marshalling area is where you collect all
18 of the stuff for the trucks to pick up?

19 MR. BASTIEN: You -- that's where you put all the
20 stuff for the trucks to be loaded. Then the checker checks
21 them and puts them in a truck.

22 ALJ: How long did you work at that type of work?

23 MR. BASTIEN: To the best of my ability, maybe
24 three years.

25 ALJ: What did you do before that?

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1 MR. BASTIEN: Loaded boxcars. 90,000 pounds or
2 100 --

3 ALJ: Was that a carry job -- a physical brute
4 strength job or did you have --

5 MR. BASTIEN: Oh, yes.

6 ALJ: -- or did you have a machine to bring it in?

7 MR. BASTIEN: No, no. The jeep drivers brought it
8 in and dropped it. And, my partner and I would load it,
9 probably up to the roof sometimes.

10 ALJ: By hand?

11 MR. BASTIEN: By hand. Anywhere from 90,000 to
12 100,000 per car.

13 ALJ: 90,000 what, pounds?

14 MR. BASTIEN: Pounds.

15 ALJ: How long did you work at that?

16 MR. BASTIEN: Oh --

17 ALJ: Roughly speaking.

18 MR. BASTIEN: Maybe four years.

19 ALJ: What did you do before that?

20 MR. BASTIEN: I worked on a mustard line.

21 ALJ: What does that mean?

22 MR. BASTIEN: Well, I was down in the -- on the
23 first floor and the girls upstairs used to shoot them down a
24 -- they'd shoot through the machine and down the runway,
25 down to me and I'd pack them on a pilot.

ALJ: Pack what on the pilot?

MR. BASTIEN: Stack them I mean, mustard.

ALJ: Mustard jars, mustard what?

MR. BASTIEN: Well, they were full. They weighed 47 -- the heaviest was 47 pounds.

ALJ: Were these cases of mustard?

MR. BASTIEN: Cases, yes they were cases. They --

ALJ: What other kind of work did you do before that?

MR. BASTIEN: I was in the United States Army for 9 years 2 months and 17 days.

ALJ: What was your -- did you have any specialty there? Did you have --

MR. BASTIEN: Yeah I was a cook.

ALJ: Cook?

MR. BASTIEN: Cook.

ALJ: Did they send you to cook or baker's school?

MR. BASTIEN: No.

ALJ: Are you receiving a pension or an award from the U. S. Army?

MR. BASTIEN: No, I'm not.

ALJ: Are you receiving a pension or an award from the Veterans Administration?

MR. BASTIEN: No, sir.

ALJ: Have you applied for one?

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1 MR. BASTIEN: Refused, sir. I was just talking
2 to him this morning about it. He told me I had to wait to
3 see what the social security does.

4 ALJ: This is what I know about you from these
5 papers, in part, and I want to go over it with you to verify
6 it. First of all, it tells me that you were born in Mont-
7 real on November 5, 1920. Is that right?

8 MR. BASTIEN: Yes, sir. That's right.

9 ALJ: And, the last time you worked was June 29,
10 1973?

11 MR. BASTIEN: June 29, June 14th. Wait a minute --
12 no, 1973 -- January 14th. That's when they let me go at
13 BWR. They gave me two weeks' notice.

14 ALJ: Well, what's significant about this date,
15 June 29, 1973, that you put in your application -- did you
16 have some other kind of a job after that and you worked for
17 a short time?

18 MR. BASTIEN: No, no sir

19 ALJ: You haven't worked since January 14, 1973
20 then -- the time that they laid you off -- gave you your
21 notice?

22 MR. BASTIEN:

23 ALJ: There's some record of your working four days.
24 I'm not -- I'm excluding that four days.

25 MR. BASTIEN: Well, let's -- wait a minute now,

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1 '73, that's when I got hurt. Oh yes, that's when I was
2 phased out from the R. P. French Company.

3 ALJ: Well, that's the last time you worked.

4 MR. BASTIEN: No, no. Then I got a job -- I went
5 to BW -- I couldn't stand around doing nothing, so I went
6 to -- looking for work all over -- you know, put in an ap-
7 plication and I couldn't get a job so I went over to this
8 place here where they'd pay you a couple of dollars an hour
9 and I relinquished my, my unemployment insurance. I was get-
10 ting -- they gave me a job working nights but I had to take
11 a physical, so they sent me down to see their company doctor
12 down on East, West Main Street, next to Ritters (phonetic).
13 And, the doctor's name I think was Wistner (phonetic) or
14 something like that. He's a surgeon at the Strong Memorial
15 hospital and he gave me a physical. An eye test and
16 everything like that and he said, I'm sorry I can't give you
17 -- recommend you for work.

18 ALJ: How long did you work then?

19 MR. BASTIEN: Could I continue, please? And, he
20 said, I can't recommend you for a job there. Well, I said
21 I'm in need of money and everything. I've got Blue Cross and
22 Blue Shield coming up and everything like that. I've got to
23 get a job. He said, are you going to be working, doing heavy
24 work or anything like that? I said, no sir. He said, what
25 are you going to do? I said, they told me I was going to be

1 a checker. And, all I had to do was check the items that
2 was in the basket and put them on a run, and shoot them to
3 the girls. Well he said, as long as that's all you have to
4 do, he says I'll take a chance and let you go there. And,
5 he gave me a letter to bring to the man, the boss, stating
6 it's effect -- these effects. So I worked four days and all --
7 I was constantly bending over, up and down, up and down so
8 I didn't -- couldn't take it, so I called up the next morning
9 personnel -- and told the woman I was quitting. So, I
10 went back up to try to draw my unemployment insurance but I
11 couldn't draw it on account of I quit the job. So, I went
12 all over again looking for work and all, and I had to have
13 money. So, finally I went back to see Mr. Brooks at the BWR,
14 a very nice man, and we talked there for a while and he says
15 -- I explained the case. I says, didn't they notify you I
16 quit. He said, I didn't get no word at all. I said, well
17 that was a mistake through your office because I called up
18 that morning. Well, he said I'll give you a job at nights
19 packing.

20 So I went on nights packing. And, I was making
21 pretty good. I was working overtime. I'd go in at noon and
22 work until 12:00 midnight, whenever they needed me I'd go in.
23 But, I had help on the side -- anything heavy or anything
24 like that, a couple of the boys would help me out. I didn't have
25 to do no pulling or bending over or lifting and all that. And,

just when I was ready to draw their benefits -- I was there from November 5th -- I started on my birthday, November 5th. -- to January 14th or 18th. Well, prior to that he called me in the office. He said San Francisco doesn't want to take a chance with you. We're giving you two weeks' notice. I said, gee I never had nobody give me two weeks' notice in my life. And he said, that's it. So I worked a week and I decided, well, why should I go back and work for them people, they were going to let me go. So they gave me a paper to draw unemployment insurance.

So I went up there and I started drawing my unemployment again. I drew a few checks there. Then I had to go to compensation. And, they wanted another medical so I had to go back to see Dr. Miller. He took X-rays. He gave me another, severe tests, and sent me up to the hospital to get blood out of all of my fingers. And, then after that I had to go back and see him again. He said, well I have to put you in for 100 percent disability social security. I said, what does that mean. Well, he says you won't be able to work no more, that's all. I have to put you in. I said, oh. I said -- I had just received a check for my unemployment insurance. So I brought it back up and told the people that I wasn't -- the people that were working that I wasn't entitled to the check so I gave it back to them. They told me, it's a good thing you gave it back to us because if we'd

1 put it in that little box over there you would have been
2 in trouble.

3 ALJ: You were -- you mentioned that you worked
4 up until January 14th or 18th --

5 MR. BASTIEN: Yes, sir.

6 ALJ: But you didn't tell me what year -- that was
7 19 --

8 MR. BASTIEN: '73 and '74.

9 ALJ: '74. You haven't worked then since?

10 MR. BASTIEN: I haven't worked since, sir.

11 ALJ: So, you've been out of work for about a year.

12 MR. BASTIEN: One year. Yeah, that's right. Well,
13 this is February, that's right. And then, then in -- about
14 a year and a half, well almost two years. I mean it's '73
15 from June until November 5.

16 ALJ: Well, what's the significance about -- you
17 are back to June again. As I understand it, you were, you
18 were let go at French's --

19 MR. BASTIEN:

20 ALJ: -- in January, 1973, right?

21 MR. BASTIEN: No. No, sir. No, not '73. I got,
22 I got hurt in January, February 28th, 22nd or 28th. In June
23 of '73 I was severanced out from the R. P. French Company.

24 ALJ: That solves the problem. That's the signifi-
25 cance of this June 19 date that you have on your application.

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1 It says you were last able to work, according to what you
2 believe, on June 29, 1973.

3 MR. BASTIEN: That's when I was severanced out
4 from the R. P. French Company. Then I drew unemployment in-
5 surance.

6 ALJ: Right. Then you worked for four days at
7 BWR and you returned later on to them and worked for -- from
8 November 5, 1973 to January 14 or 18, 1974, but you haven't
9 worked since.

10 MR. BASTIEN: Yes, sir. That's right.

11 ALJ: Now we understand it. Have you looked for a
12 job in the last years.

13 MR. BASTIEN: Well, before I was considered dis-
14 abled I, I used to go out everyday. I'd take my wife every-
15 day there -- see I can't even get her a job. She was working
16 at the R. P. French Company too and she got severanced out in
17 December of '72. Why --

18 ALJ: Do you drive, Mr. Bastien?

19 MR. BASTIEN: Well, I don't go, don't go very far
20 because I, my back gets tired. I mean I have to -- the far-
21 thest I go is maybe Lyons, New York.

22 ALJ: How far is that?

23 MR. BASTIEN: Let's see it's 32, 38 miles.

24 ALJ: Since you last was, were employed, have you
25 taken any trip, say in excess of 75 or 100 miles from home?

1 MR. BASTIEN: No, sir.

2 ALJ: I know you're married. Do you have any child-
3 ren?

4 MR. BASTIEN: I have two boys.

5 ALJ: Do they live at home?

6 MR. BASTIEN: No, one is married and he works at
7 WHAM TV, he's a --

8 ALJ: No, I'm interested in whether they live at
9 home.

10 MR. BASTIEN: No. Just, just my one son was work-
11 ing and quit. He come back to give me a hand. He had his
12 own apartment for a year. Then he, he came back. I told
13 him things were tough there and he -- so he's living with me
14 at the present time. He's on a

15 ALJ: In your own words, from your own feeling,
16 not what doctors have told you -- why do you think you can't,
17 can't work, can't do some of the jobs that you did for the
18 French people?

19 MR. BASTIEN: Well, since then I've got a lot of
20 complications. I, I can't even cut my hedge anymore. I, I
21 could fully cut it -- you know, I've got 110 feet hedge.
22 I can only go so much --

23 ALJ: Well --

24 MR. BASTIEN: Tire out, I mean.
25 tire out I mean. Sometimes I lose the strength in my hand.

(1 Drinking coffee one day, I was bringing up the cup and I
2 dropped it -- as if somebody opened up my hand. It just
3 dropped right out of my hand. I, I can push a lawn mower,
4 electric. All I do is guide it. My wife does all the raking
5 and bagging. Then in the wintertime I have a couple of
6 young boys come and clear the driveway for me.

7 ALJ: We'll return to the record. The -- we were
8 interrupted by someone coming in the door.

9 I asked you, in your own words, to tell me why you
10 think you can't work -- work, in the last year or year and
11 a half since you left French's.

12 MR. BASTIEN: I just can't. If I could I would.
13 I mean --

14 ALJ: I appreciate that, but can you give me the
15 reasons why.

16 MR. BASTIEN: Well --

17 ALJ: You've told me about your arms tightening.
18 You, that you lose strength in your hands at times and you
19 can't push -- you can push an electric lawn mower but you
20 don't rake or bag.

21 MR. BASTIEN: I can't, I can't stoop over is
22 another thing. If I do, it's my -- and, when I go down
23 to the ground I've got to go down on one knee. There's my
24 neck -- I can only twist it so far to each side. But my --
25 Your Honor, like I was saying, gee -- when you've never sick

1 and all of a sudden it strikes you like that.

2 the thing they give you all the needles in and every-
3 thing, acupuncture.

4 ALJ: Have you tried that?

5 MR. BASTIEN: No, but if I -- if they'd pay for it,
6 I'd, I'd have tried it just to see if I could get back on my
7 feet, I tell you. Because I've got a good work record with
8 the R. P. French Company. But they just didn't want none of
9 us down in Missouri. Now they're sorry they moved down
10 there.

11 ALJ: Is there anything more that you can tell me?
12 Is -- are there any more papers that you want to show me or
13 is there anything else you want to do?

14 MR. BASTIEN: No, I told you all the -- told you
15 all the truthful things I could.

16 ALJ: I have to reach a decision in this case and
17 as I told you before, and my decision has to be written. It
18 can't be made today. I'll send you a copy of my decision of
19 course. I have a number of cases, maybe 30 or 40, ahead of
20 yours that's older than yours. I'll try to decide those
21 first. As soon as I can reach your case, I'll do so.

22 MR. BASTIEN: All right, sir.

23 ALJ: The hearing is closed.

24 (The hearing was closed at 2:15 p.m. on February 5,
25 1975.)

A 83

ALJ: The hearing is reopened again.

I want to tell you that I'm going to ask the workmen's compensation board to send me the file which they have on you and from it, I'm going to extract all of the medical reports that are in that file. You can see those if you so desire. We -- I'll send them here to Rochester. If you want to come in to the Rochester office in this building and examine these, you may then look them over, read them, make any comments that you want to make on them or raise any objections. Now, do you want to see these papers?

MR. BASTIEN: I'll let you use your own judgment on them. They should all be true records. I mean there shouldn't be anything falsified on them. I mean there's no reason why I should see them.

ALJ: It's up to you. I don't assume that there'll be anything false, falsified on them. There'll be doctor reports of the several doctors that you went to.

MR. BASTIEN: That's quite all right. That's quite all right. You have my approval on that.

ALJ: All right. Then you waive your right to see them. The hearing is now closed.

(The hearing was closed at 1:20 p.m., on February 5, 1975.)

A 84

C E R T I F I C A T I O N

I have read the foregoing and hereby certify that
it is a true and complete transcription of the testimony
recorded at the hearing held in the above case before Ad-
ministrative Law Judge John J. Dumpert.

Anne M. Martin

Anne M. Martin
Transcriber

A 85



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Social Security Administration

APPLICATION FOR DISABILITY INSURANCE BENEFITS

If you are awarded monthly benefits based on this application, you will automatically have hospital and medical insurance protection under Medicare after you have been entitled to social security disability benefits for 24 consecutive months or at age 65, whichever occurs first.

NOTICE.—(a) Whoever makes or causes to be made any false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act, or (b) whoever, having received a payment for the use and benefit of another person, knowingly and willfully uses such payment for other than the person for whom it is received is subject, under the Social Security Act, to a fine of not more than \$1,000 or 1 year's imprisonment, or both.

Form Approved
OMB No. 72-RO530

(Do not write in this space)

1-21-74 75
SSA DE 708
Rochester, N.Y.
T

I hereby apply for a period of disability and/or all insurance benefits payable to me under Title II and Title XVIII of the Social Security Act, as amended.

1. Print your full name (First name, middle initial, last name) <i>Lionel J. Bastien</i>	(Check One) ☒ Male ☐ Female	Enter your Social Security number <i>079 16 5221</i>								
2. Enter your date of birth (Month, day, and year) <i>11-5-20</i>	Enter the name of the State or foreign country where you were born <i>Montreal, Canada</i>									
3. (a) Have you (or has someone on your behalf) ever before filed an application for a period of disability or social security benefits? ☐ Yes (If "Yes," answer (b), (c), (d), and (e).) ☒ No (If "No," go on to item 4).		(b) What kind of application did you file (for example, wife's, widow's, disability)?								
(c) Enter name of person on whose earnings record you filed other application	(d) Enter Social Security Number of person named in (c) (If unknown, so indicate)	(e) Are you now receiving benefits on this record? ☐ Yes ☐ No								
4. What is your disability? (Briefly describe your impairment, that is, the injury or illness that prevents, or has prevented, you from working.) <i>arthritis in back (along spine) + hands</i>										
5. (a) When did you become unable to work because of your disability?		Date (Month, day, and year) <i>6/29/73</i>								
(b) Are you still disabled? ☒ Yes (If "Yes," go on to item 6.) ☐ No (If "No," answer (c).)										
(c) If you are no longer disabled, enter the date you were again able to work.		Date (Month, day, and year)								
6. Check any of the following which apply to you: A 86 <table border="1"><tr><td>(a) ☐ Confined in a medical institution other than a general hospital</td><td>(d) ☐ Confined in a chair (Including wheel chair)</td></tr><tr><td>(b) ☐ Patient in a general hospital</td><td>(e) ☐ None of the above but unable to go outside</td></tr><tr><td>(c) ☐ Confined in bed at home</td><td>(f) ☐ Able to go outside but only with help of another person or device</td></tr><tr><td></td><td>(g) ☒ Able to go outside without help</td></tr></table>			(a) ☐ Confined in a medical institution other than a general hospital	(d) ☐ Confined in a chair (Including wheel chair)	(b) ☐ Patient in a general hospital	(e) ☐ None of the above but unable to go outside	(c) ☐ Confined in bed at home	(f) ☐ Able to go outside but only with help of another person or device		(g) ☒ Able to go outside without help
(a) ☐ Confined in a medical institution other than a general hospital	(d) ☐ Confined in a chair (Including wheel chair)									
(b) ☐ Patient in a general hospital	(e) ☐ None of the above but unable to go outside									
(c) ☐ Confined in bed at home	(f) ☐ Able to go outside but only with help of another person or device									
	(g) ☒ Able to go outside without help									

7. (a) Have you EVER filed (or do you intend to file) claim(s) for disability benefits under any workmen's compensation law or plan?
☒ YES (If "Yes," answer (b) and (c).) ☐ NO (If "No," go on to item 8.)

(b) Workmen's compensation claim numbers UXB 7730 2530

(c) Has there been any decision or any TYPE of payment (e.g., lump sum, partial, total, permanent, temporary, etc.) made on any claim filed?
☒ YES (If "Yes," go on to item (d).) ☐ NO (If "No," go on to item 8.)

(d) Date of latest decision 1/8/74 (Show month, day and year.)
☒ Claim Awarded. If awarded, go to item (e).
☐ Claim Denied. If denied, go to item (f).

(e) The award was for a
☐ Lump sum payment of \$ _____ for _____ weeks.
☒ Weekly, bi-weekly, or monthly payment (circle the correct type) of \$ 95.00
 The period(s) covered by the above payment(s) was 2/23/73 to 5/4/73
and 43.43 weekly 4/11/73 - 5/7/73
 (month, day, and year) (month, day, and year)

(f) Have you or has someone on your behalf filed an appeal of any decision or Payment made?
☒ YES ☐ NO

8. Did you work in the railroad industry any time on or after January 1, 1937?
☒ Yes ☐ No

9. (a) Were you in the active military or naval service after September 7, 1939?
☒ Yes (If "Yes," answer (b), (c), and (d).) ☐ No (If "No," go on to item 10.)

(b) Enter name of branch (Army, Navy, etc.) and country served (If other than U.S.A.)
U.S. Army
U.S. AIR FORCE

(c) Enter dates of service below:
 From: 8/39 To: 1945
1946 1949

(d) Have you received, or do you expect to receive, a benefit from any other Federal Agency?
☐ Yes (If "Yes," answer (e).)
☒ No (If "No," go on to item 10.)

(e) Name the other Federal agencies

10. • Enter below the names and addresses of all the persons, companies, or Government agencies for whom you worked during the last 12 months.
 • If you worked in agricultural employment, give this information for this year and last year.
 If neither of the above applies, write "None" below and go on to item 12.

NAME AND ADDRESS OF EMPLOYER (If you had more than one employer, please list them in order beginning with your last (most recent) employer)	WORK BEGAN		WORK ENDED (If still working show "Not Ended")	
	Month	Year	Month	Year
<u>R. T. French</u> <u>1 Mustang St.</u> <u>Boston, MA</u>	<u>June</u>	<u>73</u>	<u>6/21</u>	<u>73</u>
<u>VW Greenleaf Hwy.</u> <u>45 Greenleaf Hwy.</u> <u>W. Chester, Pa.</u> (If you need more space, use the reverse side of the back page.)	<u>11/5</u>	<u>73</u>	<u>1-18</u>	<u>74</u>

11. May the Social Security Administration or the State agency reviewing your case ask your employers for information needed to process your claim?
☒ Yes ☐ No

12. Were you self-employed this year, last year, or the year before?
☐ Yes (If "Yes," answer item 13.) ☒ No (If "No," go on to item 14.)

13.

CHECK THE YEAR OR YEARS IN WHICH YOU WERE SELF-EMPLOYED	IN WHAT KIND OF TRADE, OR BUSINESS WERE YOU SELF-EMPLOYED? (For example, storekeeper, farmer, physician)	WERE YOUR NET EARNINGS FROM YOUR TRADE OR BUSINESS \$400 OR MORE? (Check "Yes" or "No")
☐ This Year		
☐ Last Year		☐ Yes ☐ No
☐ Year Before Last		☐ Yes ☐ No

14. How much were your total earnings last year? (Count both wages and self-employment income. If none, write "None") \$ approx. 4000.00

15. (a) How much have you earned so far this year? (If none, write none) \$ 275 approx.
(b) Did you receive any money from your employer(s) on or after the date in item 5(a) when you became unable to work because of your disability? ☐ Yes ☒ No
(c) Do you expect to receive any additional money from your employer such as sick pay, vacation pay, or other special pay? ☐ Yes ☒ No
If your answer to (b) or (c) is "Yes," please give amounts and explain in "Remarks" on the back page.

16. (a) Check (✓) whether you are:
☒ Married (Whether living together or separated) ☐ Widowed ☐ Divorced ☐ Single
(If you checked "MARRIED" or WIDOWED," complete (b) and (c) if appropriate.) (If you checked "DIVORCED" or "SINGLE" go on to item 18.)

(b) Enter your wife's maiden name or your husband's name	Date of birth (If unknown, give age)	Date of marriage	Date of death (If deceased)	Your wife's or your husband's Social Security Number (If none or unknown, so indicate)
<u>Clara May Stratton</u>	<u>3-31-19</u>	<u>8-3-57</u>		<u>028-1148292</u>

(c) If you are a married woman, was your husband receiving at least one-half of his support from you at the time you became unable to work because of your disabling condition, or is he receiving at least one-half of his support from you now? ☐ Yes ☐ No

17. Answer item 17 ONLY if your husband or wife is applying for benefits.
(a) Check (✓) whether your marriage was performed by:
Clergyman or authorized public official ☐ , or other ☐ (Explain)
(b) Were you married before your present marriage? ☐ Yes ☐ No
(If "Yes," give the following information about each of your previous marriages.)

Previous marriage	To whom married	When (Month, day, and year)	Where (Enter name of city and State)
	How marriage ended	When (Month, day, and year)	Where (Enter name of city and State)
Previous marriage	To whom married	When (Month, day, and year)	Where (Enter name of city and State)
	How marriage ended	When (Month, day, and year)	Where (Enter name of city and State)

(Use "Remarks" space on back page for information about any other marriage.)

Your children (including natural children, adopted children, and stepchildren) or dependent grandchildren (including step-grandchildren) may be eligible for benefits based on your earnings record.

18. (a) Do you have ANY children who are now or were in the past 12 months UNMARRIED and:

• UNDER AGE 18	Number of children (If none, write "None")
• AGE 18 TO 23 AND ATTENDING SCHOOL	<u>none</u>
• DISABLED OR HANDICAPPED (18 or Over and disability began before Age 22)	<u>none</u>

If you have children who may qualify for benefits under any of the above conditions, answer (b) and (c).

(b)	Full Name of Child	Full Name of Child

(c) Do you wish to apply on behalf of all the children named in (b) for all insurance benefits payable to them under Title II of the Social Security Act, as amended? ☐ Yes ☐ No

If you are not applying for any child you name, enter the child's name under "Remarks" (back page of this form) and explain why you are not applying for such child. You may apply for a child even though you do not wish to be the payee for the child's benefits.

(Over)

19. Do you have a dependent parent who was receiving at least one-half of his or her support from you when you became unable to work because of your disability?
☐ Yes ☒ No 78

Do you authorize any physician, hospital, agency, or other organization to disclose to the Social Security Administration or to the State agency that may review this application or your continuing disability, any medical records or other information about your disability?
☒ Yes ☐ No

YOU MUST NOTIFY THE SOCIAL SECURITY ADMINISTRATION PROMPTLY IF:

- Your MEDICAL CONDITION IMPROVES so that you would be able to work, even though you have not yet returned to work.
- You GO TO WORK whether as an employee or a self-employed person.
- You apply for periodic benefits under any workmen's compensation law or plan.
- You are DISCHARGED FROM THE HOSPITAL if you are now hospitalized.

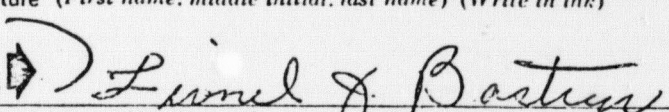
21. Do you agree to notify the Social Security Administration promptly if any of the above events occur?
☒ Yes ☐ No

Remarks: (This space may be used for explaining any answers to the questions. If additional space is required, attach separate sheet.)

7. I had ~~other~~ ^{other} benefits under workmen's compensation - in 1968 and 1970 - I will submit any information I have at home on these other benefits

IMPORTANT INFORMATION. PLEASE READ CAREFULLY.—A claimant for disability insurance benefits is required to submit medical evidence showing the nature and extent of his disability during the time he alleges he was under a disability. If such evidence is not sufficient to arrive at a determination, he may be requested to have an independent medical examination at the expense of the Social Security Administration. Should Social Security obtain information useful to his physician for treatment, such information may be furnished to him.

I know that anyone who makes a false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal Law. I affirm that the above statements are true.

SIGNATURE OF APPLICANT		Date (Month, day, year)
Signature (First name, middle initial, last name) (Write in ink)		1-21-74
SIGN HERE 		Telephone Number(s) at which you may be contacted during the day
Mailing Address (Number and street, Apt. No., P.O. Box, or Rural Route)		288-8216
City and State	ZIP Code	Enter Name of County (if any) in which you now live
628 Harrison Ave.	14609	Monroe

Witnesses are required ONLY if this application has been signed mark (X) above. If signed by mark (X), two witnesses to the signing who know the applicant must sign below, giving their full addresses.

1. Signature of Witness	2. Signature of Witness
Address (Number and street, City, State, and ZIP Code)	Address (Number and street, City, State, and ZIP Code)

A 89



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BALTIMORE, MARYLAND 21241

79

BUREAU OF
DISABILITY INSURANCE

FEB 20 1974

REFER TO:

079-16-5221

Mr. Linnet J Bastien
628 Carson Av
Rochester NY 14609

Dear Mr. Bastien:

We have determined that you are not entitled to disability insurance benefits because you do not meet the disability requirement of the law. In reaching this decision we considered how much your condition has affected your ability to work. After carefully studying your records, including the medical evidence and your statements, and considering your age, education, training, and experience, it has been determined that your condition is not disabling within the meaning of the law.

Your social security record at the time you filed your application shows that you meet the earnings requirement for disability purposes until December 31, 1978. Any additional earnings which may be credited to your record after the time you applied may, of course, extend this date.

If your condition should get worse and prevent you from doing any substantial gainful work, you should get in touch with any social security office about filing another disability application. An explanation of the disability requirement and the earnings requirement is given on the back of this notice.

If you believe that this determination is not correct, you may request that your case be re-examined. If you want this reconsideration, you must request it not later than 6 months from the date of this notice. You may make your request through any social security office. If additional evidence is available, you should submit it with your request. Please read the enclosed leaflet for a full explanation of your right to question the determination made on your claim.

If you have questions about your claim, you may get in touch with any social security office. Most questions can be handled by telephone or mail. If you visit an office, however, please take this letter with you.

Sincerely yours,

Harold G. Wanzer

Harold G. Wanzer
Director, Division of Initial Claims

Enclosure:

SSI-58

M P

A 90

SSA-L808.1F (8-72)

EXHIBIT NO. 2 (2 PAGES)

IMPORTANT INFORMATION

Under the Social Security Act, a person may qualify for disability insurance benefits only if he meets both the earnings requirement and the disability requirement of the law. The information below explains these requirements:

The Earnings Requirement:

- A person whose disability began before age 24 meets the earnings requirement if he has social security credits for 6 calendar quarters (1½ years) of work during a 12-quarter (3-year) period ending with a quarter before age 24 in which he is disabled.
- A person whose disability began between the ages 24 and 31 meets the earnings requirement if he has social security credits for work in at least one half of the calendar quarters in the period beginning with the calendar quarter after age 21 and ending with a quarter before age 31 in which he is disabled.
- A person whose disability began at age 31 or later needs to meet two provisions of the earnings requirement. One, he needs credit for 20 calendar quarters (5 years) of work during a 40-quarter period (10 years) ending in or after a quarter in which he is disabled. And second, he needs credit for one calendar quarter of work for each year after 1950 (or after reaching age 21, if that is later) up to the year his disability began. In the second instance, the credits may have been earned at any time.

If a person does not have credit for the amount of work shown above he is not eligible for disability insurance benefits.

The Disability Requirement:

A person may be considered disabled only if he is unable to perform any substantial gainful work due to a medical condition which has lasted or can be expected to last for a continuous period of at least 12 months. His impairment must be so severe as to prevent him from working not only in his usual occupation but in any other substantial gainful work considering his age, education, training, and work experience.

The decision on your claim was made by the Social Security Administration on the basis of a disability determination by an agency of the State in which you live. Physicians and other trained disability evaluation personnel in the State agency participate in making such determinations.

Definitions of disability are not the same in all government and private disability programs. Government agencies must follow the particular laws which apply to their disability programs. Therefore, a finding by a private organization or another government agency that a person is disabled would not necessarily mean that he meets the disability requirement of the Social Security Act.

No benefits may be paid to the wife, husband, or child unless the wage earner or self-employed person is entitled to disability insurance benefits.

This notice concerns only your disability application. It is not a decision as to whether retirement, survivors, or hospital and medical insurance benefits are payable.

According to your present earnings record and the date of birth you gave us, you have enough credit for work under social security to qualify you for retirement benefits at age 62.

F-3-72

GPO : 1973 O - 73 - 517-066

A 91



REQUEST FOR RECONSIDERATION

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON

SOCIAL SECURITY CLAIM NUMBER

Lionel J. Bastien
NAME OF CLAIMANT (If different from person named above.)

079-16-5221

CLAIM FOR (Specify type, e.g., retirement, disability, hospital insurance, etc.)

(Do not write in this space)

21108 SSADO

Rochester NY

7/10/74
1974 JUL 15 NY 33

I do not agree with the determination made on the above claim and request reconsideration.

81

My reasons are:

my dr (Dr Samuel Miller Jr) told me
I can do no work whatsoever.

NOTE: If the date of the notice of the determination on this claim was more than six months ago include your reason for not making this request earlier.

I am submitting the following additional evidence (If none, write "None."):

Signature (First name, middle initial, last name) (Write in ink)

Date (Month, day, year)

SIGN
HERE

Lionel J. Bastien

Telephone Number

288-8216

Mailing Address (Number and street, Apt. No., P.O. Box, or Rural Route)

628 Harmon Av.

City and State

Rochester NY

ZIP Code

14609

Enter Name of County (if any) in which you now live

Monroe

Witnesses are required ONLY if this request has been signed by mark (X) above. If signed by mark (X), two witnesses to the signing who know the person requesting reconsideration must sign below, giving their full addresses.

1. Signature of Witness

2. Signature of Witness

Address (Number and street, City, State, ZIP Code)

Address (Number and street, City, State, ZIP Code)

FOR SOCIAL SECURITY OFFICE USE ONLY

PROVIDER NAME AND NUMBER
(City and State)INTERMEDIARY NAME AND NUMBER
(City and State)

SOCIAL SECURITY OFFICE ADDRESS

Exhibit - 3

ROUTING INSTRUCTIONS (Check one)

☐ State Agency (Route with disability folder)☐ Division of Foreign Claims, Balto.☐ Payment Center BDI, Balto. ☐☐ BDPA, Attn: CWAB, Balto.☐ Intermediary ☐ DRB, Balto. ☐

RO (Emergency)

A 92

EXHIBIT 3



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BALTIMORE, MARYLAND 21241

82

REFER TO: --

NOV 14 1974

BUREAU OF
DISABILITY INSURANCE

IDI-677-R
079-16-5221

NOTICE OF RECONSIDERATION DETERMINATION

Mr. Lionel J. Bastien
628 Carson Avenue
Rochester Monroe
New York 14609

Dear Mr. Bastien:

Upon receipt of your request for reconsideration, we had your claim independently reviewed by a physician and disability examiner in your State agency which works with us in making disability determinations. All the evidence in your case has been thoroughly evaluated; this includes the medical evidence and the additional information received since the original decision. A careful review has been made of this evidence taking into consideration your age, education, training and work experience. We find that the previous determination denying your claim for disability insurance benefits was proper under the law.

A person may be considered disabled only if he is unable to perform any substantial gainful work due to a medical condition which has lasted or can be expected to last for a continuous period of at least 12 months. His impairment must be so severe as to prevent him from working not only in his usual occupation but in any other substantial gainful work.

If you believe that the reconsideration determination is not correct, you may request a hearing before an administrative law judge of the Bureau of Hearings and Appeals. If you want a hearing, you must request it not later than 6 months from the date of this notice. You may make your request through any social security office. Read the enclosed leaflet BHA-1 for a full explanation of your right to appeal.

If you have questions about your claim, you should get in touch with any social security office. Most questions can be handled by telephone or mail. If you visit an office, however, please take this letter with you.

ISSUED BY: Division of Reconsideration
Bureau of Disability Insurance

Enclosure (1)

A 93

EXHIBIT NO. - 4 ESA-L681 (10-73)

DISABILITY DETERMINATION AND TRANSMITTAL

3. W/E (if Auxiliary Filing)		RSI W/E ☐ DIS W/E ☐		1. FOLDER TO: BDI ☐ SA ☒ DIO ☐		2. DATE APP'D. 01/21/74	
5. NAME AND ADDRESS OF CLAIMANT Lionel J Bastien 623 Garson Ave Rochester Monroe NY 14609				6. DB 11/05/20		4. SOCIAL SECURITY NUMBER 079-16-5221 83	
14. ☐ W/E DOES NOT MEET QC REQ. A. ☐ DIS. BDI REVIEW B. ☐ SINCE LAST DET.				7. SEX M ☒ F ☐		8. RACE W ☒ N ☐ O ☐	
15. NAME AND ADDRESS OF CLAIMANT Lionel J Bastien 623 Garson Ave Rochester Monroe NY 14609				11. CLAIM FOR FREEZE ☐ DIS ☒ CHILD ☐ DWB ☐		12. FAMILY STATUS MAR. ☒ SG. ☐ NO. CHILDREN (UNDER 18) 0	
16. NON-DIS. DEV. IN PROGRESS ☐				13. QC REQ. LAST MET 12/31/73 SI		17. MED. DEV. DEF. ☐	
18. S A CODE 330		19. STATE New York		20. DISTRICT OFFICE ADDRESS 100 State Street Rochester NY 14614		DO CODE 108 RO CODE 21	
21. DO/BO REPRESENTATIVE <i>Charles L. Bastien</i>				23. REMARKS All Do Dev. Complete			
22. DATE OF TRANSMITTAL 02/19/74				TELEPHONE NO.: 716-283-3216 PRESCRIBED PERIOD: Beginning Ending			
PURSUANT TO PROVISIONS OF SEC. 221 OF SOCIAL SECURITY ACT, IT IS DETERMINED THAT THE CLAIMANT:							
24. ☐ HAS BEEN UNDER A DISAB. SINCE		25. ☐ WAS UNDER A DISAB. A. DATE FROM B. TO		26. ☐ WAS NOT UNDER A DISAB. ON OR BEFORE (Date)		29. DIAGNOSIS LOW BACK SYNDROME TRAUMA	
27. ☒ WAS NOT UNDER A DISAB.		28. CASE OF BLINDNESS AS DEFINED IN SEC. 216(i) A. ☐ NOT UNDER A DISAB. FOR CASH BENE. PURP. B. ☐ UNDER A DISAB. FOR CASH BENE. PURP. SINCE		30. MOB CODE 9		31. VOCATIONAL BACKGROUND (Occupation) CHECKER SPICE MFG	
32. BASIS FOR DETERMINATION REG-BASIS CODE FI-1502(a)		33. REC. RE-EXAM ☐ NONE ☐ (Date) ☐ HOSP.		34. DISABILITY EXAMINER S A <i>John A. Gentry</i>		35. DATE 7/13/74	
36. REVIEW PHYSICIAN SA <i>John A. Gentry</i>		37. DATE 2/14/74		38. ☐ CHILD'S DISABILITY BEGAN BEFORE AGE 18 AND CONTINUES. ☐ CHILD NOT UNDER A DISABILITY WHICH BEGAN BEFORE AGE 18.		39. ☐ W/E MEETS QC REQ. IN _____ QTR. ☐ W/E DOES NOT MEET QC REQ. HAS _____ OF _____ QTRS. FOR ADD ENDING	
40. A PERIOD OF DISABILITY IS ☐ ESTABLISHED FROM _____ TO _____ ☒ NOT ESTABLISHED		41. REMARKS Denial letter released, folder retained in S/A		42. RE-EXAM REQ.		43. DISABILITY EXAMINER	
44. DATE		45. DISABILITY EXAMINER		46. DATE		47. ☐ BDI ☐ PC	
48. LTR/PAR. NO. 8081 (12/31/78) F.		49. PRIOR ACT. ☐ PD ☐ PT ☐ REVISED		50. BASIS CODE		51. A OR D CODE	
52. RETURN CODE		53. CAT. ☐ V ☐ DIB ☐ DSP ☐ CH ☐ FR		54. SPECIAL CODE ☐ VA ☐ VAD		55. LIST NO.	

FORM SSA-891 (7-73)

3-FOLDER COPY

EXTENSION NO. 5 (2 PAGES)

FEB 19 1974

A 94

☒ CONTINUED ON ATTACHED SHEET (Use SSA-834)

(RELEASE DATE OF FOLDER TO BDI/PC)

33. REC. RE-EXAM ☐ NONE ☐ (Date) ☐ HOSP.		34. DISABILITY EXAMINER S A <i>John A. Gentry</i>		35. DATE 7/13/74		36. REVIEW PHYSICIAN SA <i>John A. Gentry</i>		37. DATE 2/14/74	
38. ☐ CHILD'S DISABILITY BEGAN BEFORE AGE 18 AND CONTINUES. ☐ CHILD NOT UNDER A DISABILITY WHICH BEGAN BEFORE AGE 18.		39. ☐ W/E MEETS QC REQ. IN _____ QTR. ☐ W/E DOES NOT MEET QC REQ. HAS _____ OF _____ QTRS. FOR ADD ENDING		40. A PERIOD OF DISABILITY IS ☐ ESTABLISHED FROM _____ TO _____ ☒ NOT ESTABLISHED		41. REMARKS Denial letter released, folder retained in S/A		42. RE-EXAM REQ.	
43. DISABILITY EXAMINER		44. DATE		45. DISABILITY EXAMINER		46. DATE		47. ☐ BDI ☐ PC	
48. LTR/PAR. NO. 8081 (12/31/78) F.		49. PRIOR ACT. ☐ PD ☐ PT ☐ REVISED		50. BASIS CODE		51. A OR D CODE		52. RETURN CODE	
53. CAT. ☐ V ☐ DIB ☐ DSP ☐ CH ☐ FR		54. SPECIAL CODE ☐ VA ☐ VAD		55. LIST NO.		56. ☐ VR REFERRAL		57. ☐ BDI ☐ PC	

CONTINUATION SHEET
FOR DISABILITY DETERMINATION

84

NOTE---Use this form only when necessary for continuation of rationale of "DISABILITY DETERMINATION" or "CESSATION OR CONTINUANCE OF DISABILITY".

NAME OF DISABLED INDIVIDUAL LIONEL J. BASTIEN	NAME OF WAGE EARNER (IF AUXILIARY FILING)	SOCIAL SECURITY NUMBER 079-16-1221
--	---	---------------------------------------

Source

Information from Workmen

Comp Board, last dated Jan 1974

He has mild low back back
syndrome.

Considering slight impairment,
application is denied.

1 95

DISABILITY EXAMINER SA G. M. G. 1/13/74	DATE	REVIEW PHYSICIAN SA J. L. 1/14/74	DATE	DISABILITY EXAMINER BDI	DATE	DISABILITY EXAMINER BDI	DATE
--	------	--------------------------------------	------	-------------------------	------	-------------------------	------

FORM SSA-834 (9-71)

FOLDER

DISABILITY DETERMINATION
AND TRANSMITTAL

1. FOLDER TO: BDI ☐ SA ☒ DIO ☐		2. DATE APP'D. 1/21/74
3. W/E (If Auxiliary Filing) RSI ☐ W/E ☒ DIB ☐ W/E ☐		4. SOCIAL SECURITY NUMBER 079-16-5221
5. NAME AND ADDRESS OF CLAIMANT Lionel J. Bastien 628 Garson Avenue Rochester Monroe NY 14609		6. DB 11/5/20
7. SEX M ☒ F ☐		8. W N O RACE ☒ ☐ ☐
9. AOD 6/29/73		10. AT AGE 53
11. CLAIM FOR FREEZE ☐ DIB ☒ CHILD ☐ DWB ☐		12. FAMILY STATUS MAR. ☐ SG. ☐ NO. CHILDREN (UNDER 18)
13. QC REQ. LAST MET ☐ SI. ☐		14. ☐ W/E DOES NOT MEET QC REQ. A. ☐ DIS. BDI REVIEW B. ☐ SINCE LAST DET.
15. PREV. DENIED OR TERM. ☐		16. NON-DIS. DEV. IN PROGRESS ☐
17. MED. DEV. DEF. ☐		18. S A CODE 330
19. STATE New York		20. DISTRICT OFFICE ADDRESS 100 State Street Rochester New York 14614
21. DO/BO REPRESENTATIVE		DO CODE 108
22. DATE OF TRANSMITTAL		RO CODE 21
23. REMARKS rec'd in S/A 9/3/74		
PURSUANT TO PROVISIONS OF SEC. 221 OF SOCIAL SECURITY ACT, IT IS DETERMINED THAT THE CLAIMANT:		
24. ☐ HAS BEEN UNDER A DISAB. SINCE		25. ☐ WAS UNDER A DISAB. A. DATE FROM B. TO
26. ☐ WAS NOT UNDER A DISAB. ON OR BEFORE (Date)		29. DIAGNOSIS Osteoarthritis
27. ☒ WAS NOT UNDER A DISAB.		28. CASE OF BLINDNESS AS DEFINED IN SEC. 216(i) A. ☐ NOT UNDER A DISAB. FOR CASH BENE. PURP. B. ☐ UNDER A DISAB. FOR CASH BENE. PURP. SINCE
30. VOCATIONAL BACKGROUND (Occupation) Checker (any end)		30. MOB CODE C
31. OCC. YEARS 5		32. EDUC. YEARS 8
32. BASIS FOR DETERMINATION REG-BASIS CODE H1-1502-C		33. LISTING

A 96

33. REC. RE-EXAM ☐ NONE ☐ (Date) ☐ HOSP.		34. DISABILITY EXAMINER SA Dore K. Blomfield		35. DATE 10/23/74	36. REVIEW PHYSICIAN SA J. A. Turkell	37. DATE 10/23/74
38. ☐ CHILD'S DISABILITY BEGAN BEFORE AGE 18 AND CONTINUES. ☐ CHILD NOT UNDER A DISABILITY WHICH BEGAN BEFORE AGE 18.		39. ☐ W/E MEETS QC REQ. IN _____ QTR. ☐ W/E DOES NOT MEET QC REQ. HAS _____ OF _____ QTRS. FOR AOD ENDING.		40. A PERIOD OF DISABILITY IS ☐ ESTABLISHED FROM _____ TO _____ ☒ NOT ESTABLISHED		
41. REMARKS						
42. RE-EXAM REQ.		43. DISABILITY EXAMINER		44. DATE	45. DISABILITY EXAMINER Dore K. Blomfield	
46. DATE		47. ☐ BDI ☐ PC		48. LTR/PAR. NO L681		49. PRIOR ACT. ☐ PD ☒ REVISED
50. BASIS CODE		51. A OR D CODE		52. RETURN CODE		53. CAT. ☐ W ☐ DIB ☐ OSF ☐ CH ☐ FR
54. SPECIAL CODE ☐ VA ☐ VAD		55. LIST NO.				

CONTINUATION SHEET
FOR DISABILITY DETERMINATION

DB:ele RCH 1

85

NOTE.--Use this form only when necessary for continuation of rationale of "DISABILITY DETERMINATION" or "CESSATION OR CONTINUANCE OF DISABILITY".

NAME OF DISABLED INDIVIDUAL	NAME OF WAGE EARNER (IF AUXILIARY FILING)	SOCIAL SECURITY NUMBER
Lionel J. Bastien		079-16-5221

The statement of evidence in the determination of February 19, 1974, except as modified herein, is hereby incorporated by reference, but not the inferences, findings or conclusions thereon.

Dr. Miller - Report of June 25, 1974.

Dr. Pettee (Neurologist) - Consultative Examination 10/11/74.

This 54 year old wage earner has some osteoarthritis of the spine, with some limitation of motion. However, a recent consultative examination with a neurologist, including x-rays of the complete spine, reveals that claimant retains the capacity to function as a checker, a job which he states he held for five years from 1966 to 1971, and which is classified as light work. The claim is, therefore, denied.

A 97

(INITIAL AND DATE)

EXAMINER SA	DATE	REVIEW PHYSICIAN SA	DATE	DISABILITY EXAMINER BDI	DATE	DISABILITY EXAMINER BDI	DATE
AKB	10/23/74	WT	10/23/74			gml	11/5/74

FORM SSA 834
(9-71)

FOLDER

Form SS-5
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

R.R.B.

U. S. SOCIAL SECURITY ACT
APPLICATION FOR ACCOUNT NUMBER

079-16-5221

PRINT NAME LIONEL JOSEPH BASTIEN
 Joseph (EMPLOYEE'S FIRST NAME) (MIDDLE NAME) Bastien (LAST NAME)
 (MARRIED WOMEN: GIVE MAIDEN FIRST NAME, MAIDEN LAST NAME, AND HUSBAND'S LAST NAME)
 2. 306 Madison Ave. 3. Ogdensburg, New York
 (STREET AND NUMBER) (POST OFFICE) (STATE)
 4. Crescent Hotel 5. 104 Crescent St., Ogdensburg, New York
 (BUSINESS NAME OF PRESENT EMPLOYER) (BUSINESS ADDRESS OF PRESENT EMPLOYER)
 6. 70 7. November 5th, 1920 8. Montreal, P. Q., Canada
 (AGE AT LAST BIRTHDAY) (DATE OF BIRTH: (MONTH) (DAY) (YEAR) (SUBJECT TO LATER VERIFICATION)) (PLACE OF BIRTH)
 9. Ralph Peter Bastien 10. Vivian Rose Fortier
 (FATHER'S FULL NAME) (MOTHER'S FULL MAIDEN NAME)
 1. SEX: MALE ☒ FEMALE ☐ 12. COLOR: WHITE ☒ NEGRO ☐ OTHER ☐
 (CHECK (X) WHICH) (CHECK (X) WHICH) (SPECIFY)
 3. IF REGISTERED WITH THE U. S. EMPLOYMENT SERVICE, GIVE NUMBER OF REGISTRATION CARD Became employee June 7, 1937
 4. IF YOU PREVIOUSLY FILLED OUT A CARD LIKE THIS, STATE No (PLACE) (DATE)
June 28, 1937 16. Joseph A. Bastien
 (DATE SIGNED) (EMPLOYEE'S SIGNATURE, AS USUALLY WRITTEN)
 DETACH ALONG THIS LINE

Exhibit- 7

A 98

66
A
66

EARNINGS RECORD - P.I.A. DETERMINATION

[illegible]

079-14-5221

89

Employers Insurance of Wausau

NOTICE THAT PAYMENT OF COMPENSATION FOR DISABILITY HAS BEEN STOPPED OR MODIFIED

ANSWER ALL QUESTIONS FULLY

ALL COMMUNICATIONS SHOULD REFER TO THESE NUMBERS							
1. W.C.B. Case Number	2. Carrier Case Number	3. Carrier Code	4. Date of Injury				
77302530	D-64-51334	71	2-22-73				
Name		Address to which notices should be sent (Give Number and Street, City, State, and Zip Code)					
5. Injured Person		122 GARSON AVE., ROCHESTER, N.Y. 14601					
6. Employer		ONE MUSTARD ST., ROCHESTER, N.Y. 14601 847 James Street P.O. Box 1045 Syracuse, New York 13201					
7. Carrier		EMPLOYERS MUTUAL LIABILITY INSURANCE COMPANY OF WISCONSIN					
8. Date Disability Began		9. Average Weekly Wage on Which Tot. Disab. Pmts. Were Computed		11. Date Most Recent Payment Mailed			
2-22-73		11.00		2-22-73			
12. SUMMARY OF COMPENSATION PAYMENTS FOR DISABILITY, EXCLUDING MEDICAL							
Type of Disability	T/P	Period(s) of Payment		Less Days Worked	Number of Weeks	Weekly Rate	Amount
		From	To				
TOTAL	T	2-23-73	4-11-73		1 3/5	45.00	127.00
PARTIAL	33 1/3	3-4-73	5-2-73		3	43.00	129.00
BEST COPY OBTAINABLE							
DISFIGUREMENT							
*Indicates "T" for temporary disability "P" for permanent disability				TOTAL		256.00	
13. Has claimant returned to work?		a. At regular wage?		Date of return		b. At reduced earnings?	
☒ Yes ☐ No		☐ Yes ☒ No				☐ Yes ☒ No	
14. Has compensation for disability been paid in full?				a. If not paid in full, give reasons in space below why payments have been stopped or modified. Attach supporting medical reports if reason is degree or extent of related disability.			
☐ Yes ☒ No							
COMPENSATION BENEFITS TO BE PAID AT 33 1/3% PER MEDICAL EXAM OF 4-11-73 BY DR. LEVE.							
Dated		Signed By		Title			
5-4-73		L. GAJALEE		CLAIMS CORRESPONDENT			

Prescribed by Chairman
Workmen's Compensation Board
State of New York

1-C-2 (4-66) 1203-2114 7-64

SEE REVERSE SIDE

Exhibit-9
9 (4 PAGES)

A 100

079-16-5221

90

Employers Insurance of Wausau

NOTICE THAT PAYMENT OF COMPENSATION FOR DISABILITY HAS BEEN STOPPED OR MODIFIED

ANSWER ALL QUESTIONS FULLY

ALL COMMUNICATIONS SHOULD REFER TO THESE NUMBERS						
1. W.C.I. Case Number	2. Carrier Case Number	3. Carrier Code	4. Date of Injury			
7-22-73	D-14-56114	91	2-22-73			
Name		Address to which notices should be sent (Give Number and Street, City, State, and Zip Code)				
LIONEL J. DISTAN		628 GARSON AVE., ROCHESTER, N.Y. 14607				
Employer THE R.T. FRENCH CO. EMPLOYERS MUTUAL LIABILITY INSURANCE COMPANY OF WISCONSIN		ONE HUSTARD ST., ROCHESTER, N.Y. 14607 847 James Street P.O. Box 1015 Syracuse, New York 13201				
5. Date Disability Began	6. Average Weekly Wage on Which Tot. Disab. Rate Was Computed	7. Date First Payment Mailed	8. Date Most Recent Payment Mailed			
2-22-73	\$ 195.45	2-13-73	5-14-73			
12. SUMMARY OF COMPENSATION PAYMENTS FOR DISABILITY, EXCLUDING MEDICAL						
Type of Disability	T/P*	Period(s) of Payment From To	Less Days Worked	Number of Weeks	Weekly Rate	Amount
TOTAL	T	2-23-73 4-11-73		6 3/5	75.00	122.00
PARTIAL	33 1/3%	4-11-73 5-7-73		3 3/5	43.43	156.31
DISFIGUREMENT						
*Indicate: "T" for temporary disability "P" for permanent disability						TOTAL 278.31
13. Has claimant returned to work?		a. At regular wages?	Date of return	b. At reduced earnings?	Date of return	
Yes ☐ No ☒		Yes ☐ No ☒	ABLE 5-7-73	Yes ☐ No ☒		
14. Has compensation for disability been paid in full?		a. If not paid in full, give reasons in space below why payments have been stopped or modified. Attach supporting medical re- ports if reason is degree or extent of related disability.				
Yes ☐ No ☒						
COMPENSATION BENEFITS TO BE PAID AT 33 1/3% PER MEDICAL EXAM OF 4-11-73 BY						
DR. LEVE		Signed By		Title		
5-14-73		J. RAHALI		CLATH CORRESPONDENT		

Prescribed by Chairman
Workers' Compensation Board
State of New York

SEE REVERSE SIDE

A 101

079-16-5221

EMPLOYERS INSURANCE OF WISCONSIN

91

NOTICE THAT THE PAYMENT OF COMPENSATION HAS BEGUN
WITHOUT AWAITING AWARD OF THE WORKMEN'S COMPENSATION BOARD

ANSWER ALL QUESTIONS FULLY

ALL COMMUNICATIONS SHOULD REFER TO THESE NUMBERS		3. Carrier Code	4. Date of Injury
1. W.C.B. Case Number	2. Carrier Case Number	71	2-22-73
Name		Address to which notices should be sent (Give Number and Street, City, State, and Zip Code)	
5. Injured Person	LEONARD J. EASTMAN		125 GABSON AVE., ROCHESTER, N.Y. 14609
Employer	R. T. EMMETT CO.		ONE MUSTARD ST., ROCHESTER, N.Y. 14601
Carrier	EMPLOYERS MUTUAL LIABILITY INSURANCE COMPANY OF WISCONSIN		847 JAMES STREET SYRACUSE, NEW YORK 13201

6. Description (Diagnosis) of Injury: ALLIGES INJURY TO LOWER BACK

9. Place where injury occurred: ROCHESTER, N.Y. (City, Town or Village) (State)

10. Payment has begun from 2-2-73 at a weekly rate of \$ 95.00

a. ☒ Check here if weekly rate shown is the maximum rate allowed under the law in effect on the date of injury

b. ☐ Check here if weekly rate shown is a temporary rate subject to adjustment upon receipt of payroll information

Rate Computation If Item 10 b Is Not Checked

Average Daily Wage \$ _____ multiplied by _____ = \$ _____ Divided by 52 =
Average Weekly Wage \$ _____ multiplied by 2/3 = weekly compensation rate (subject to maximum)

11. Date disability began 2-22-73

12. Date employer or carrier first had knowledge of injury, whichever is earlier 2-22-73

13. Date of receipt by carrier of employer's report of injury (C-2 or C-2.5) (If None, So State) 2-21-73

14. Date first payment mailed 2-12-73

15. If payee is other than injured person, state name of payee _____

The employer or the insurance company will notify the Chairman, Workmen's Compensation Board, and the claimant and his representative, if pay when compensation is stopped or modified.

Dated 2-12-73

Signed By L. CANALLY

Official Title CLAIM REPRESENTATIVE

Presented by Chairman
Workmen's Compensation Board
State of New York

A 102

C71A (3-70)

State of New York

079-16-5221

WORKMEN'S COMPENSATION BOARD

REPORT OF MEDICAL EXAMINATION

93

W. C. B. CASE No. 7730 2530

SOCIAL SECURITY NUMBER _____

CLAIMANT Lionel J. BastienEMPLOYER R. T. French Co.STATE OF NEW YORK }
Monroe County } SS Dr. Della Porta

being duly sworn deposes and says that he is a Physician, duly licensed in the State of New York; that he is a Compensation Examining (Physician), (Ophthalmologist) of the New York State Workmen's Compensation Board; that he has this day examined the claimant named above and makes the following report and findings therefrom:

Claimant sustained a low back injury.

At the present time he complains of low back pain.

Examination reveals no muscle spasm or deformity of the back. Low back motion is carried out to a full range, except for a mild restriction of forward flexion which is associated with pain. Straight leg raising is carried out to 80° bilaterally. No atrophy is noted in either leg. Deep tendon reflexes are equal and active.

Claimant has a mild partial disability.

The original document, of which this is a photocopy, appears to be genuine and unaltered and to have been made at the time purported.

Signature Margaret Cunningham
Date 1-21-74 Title CPT

Subscribed and sworn to before me

this 3rd day of Jan. 19 74 rs

Authorized Under Sec. 142, Subd. 3,
of the Workmen's Compensation Law.

This report was dictated under oath in the minutes of _____
(Date)

(Signature of [Physician] [Ophthalmologist])

Exhibit- 10

C-71A

To the Claimant:

SHOW THIS REPORT TO YOUR DOCTOR

C-71A

A 104

State of New York
WORKMEN'S COMPENSATION BOARD

079-16-5221

DATE OF HEARING		DATE OF THIS NOTICE	
1/3/74		1/8/74 FK	
*WCB Case No.		Date of Accident	Social Security Number
7730-2530		2/22/73	079-16-5221
Carrier Case No.		Carrier Code	
B-61-56114		91	
Claimant LIONEL J BASTON 628 GARSON AVE ROCHESTER NY 14609			
* Employer THE R T FRENCH CO ONE MUSTARD ST ROCHESTER NY 14609			

NOTICE OF DECISION

94

CLAIMANT

READ IMPORTANT INFORMATION
ON REVERSE SIDE.

If case was "Continued" and continuing payment was directed, it shall be made at the rate for the period stated and shall be continued thereafter until the employer or carrier has medical or payroll evidence of a change of condition and gives notice thereof to the Chairman, Workmen's Compensation Board, unless otherwise provided in the decision. A further hearing will be held in a "continued" case to determine the extent of further disability, if any.

The original document, of which this is a photocopy, appears to be genuine and unaltered and to have been made at the time purported.

Signature *Margaret C. Cunningham*
Date 1-31-74 Title *CRT*

After hearing on date stated above the following Decision and Award was made and duly filed this day.

AWARD: THE EMPLOYER AND/OR THE INSURANCE CARRIER ARE DIRECTED TO PAY AT ONCE

for disability over a period of			at rate per Week	the sum of	TO:
weeks	from	to			
6 3/5	2/23/73	4/11/73	\$ 95.00	\$ 627.00	CLAIMANT LESS PAYMENTS MADE COVERING THIS PERIOD.
3 3/5	4/11/73	5/7/73	43.43 RE	156.35	
as lien on award payable by separate check by carrier to CLAIMANT'S REPRESENTATIVE OR ATTORNEY					
fee to DOCTOR for attendance at hearing					

CONTINUED.

DECISION: Case was

ACCIDENT, NOTICE & CAUSAL RELATION ESTABLISHED LOW BACK INJURY.

AVERAGE WEEKLY WAGE ESTABLISHED \$195.45

Exhibit - 11

*If the WCB Case No. is preceded by "F," this decision is made under the Volunteer Firemen's Benefit Law, and the liable political subdivision is deemed to be the "Employer" of the volunteer fireman. In all other cases, this decision is made under the Workmen's Compensation Law.

C-23 (3-72)

Se Senior 11
 Chairman
 (2 pages)

A 105

CLAIMANT

WORKMEN'S COMPENSATION BOARD

State of New York

079-16-5221

OFFICE OF
HEARING

PLACE ROCHESTER NY 155 W MAIN ST 1 120-CORRID FLOOR	PART ST 1	DATE THURSDAY JAN. 3-1974	TIME 10:00AM	95
WC Case No. 7730 2530	Date of Accident 2 22 73	Social Security Number 079 16 5221		
Carrier Code No. B 6456114	Carrier Code 91 SYN			
Claimant MICHAEL J. EASTEN 575 GUNSON AVE. ROCHESTER NY 14609				
Employer THE R. T. FRENCH CO. ONE MUSTARD ST. ROCHESTER NY 14609				

CLAIMANT AND CARRIER SHOULD BE PRESENT AT HEARING AND PRODUCE NECESSARY EVIDENCE INDICATED. LOW, OTHERWISE, THE REFEREE MAY MAKE HIS DECISION BASED ON EVIDENCE IN THE FILE.

CLAIMANT
BRING THIS NOTICE WITH YOU. READ THE INFORMATION ON THE REVERSE SIDE. IT IS IMPORTANT.

BEST COPY OBTAINABLE

TO COMPLETION:

PURPOSE OF HEARING

- ☒ Period and extent of disability ☒ Loss of earnings ☐ Accident - Notice to employer. Causal relationship of accident to injury
- ☐ Rate of compensation ☐ Carrier Penalty

TO HAVE CLAIMANT EXAMINED BY STATE PHYSICIAN FOR:

- ☒ Disability ☐ Facial Disfigurement ☐ Final Adjustment ☐ Treatment

BY CLAIMANT:

EVIDENCE TO BE PRODUCED

- ☐ Latest medical report from own physician ☐ Record of earnings since accident ☐
- BY EMPLOYER OR CARRIER:
- ☐ Payroll of claimant ☐ Payroll of similar worker ☐ C-2, Employer's Report of Injury ☐ Medical reports
- ☐ C-4 Final medical report ☐ X rays ☐ C-11 (Notice of claimant's return to work)

In Volunteer Firemen's Benefit cases, the liable political subdivision is deemed to be the "EMPLOYER" of the volunteer fireman.

☐ Hospital records

12 12 73 JD

Date:

C-15 (9-73)

Charles C. Smith

A 106



RAILROAD EMPLOYMENT QUESTIONNAIRE

DATE
1-21-74

NAME OF PERSON ON WHOSE RECORD SOCIAL SECURITY BENEFITS ARE CLAIMED

Lionel J. Bastien

SOCIAL SECURITY NUMBER

079-16-5221

A: To be completed whenever the deceased worked in the railroad industry on or after January 1, 1937.

96

(1) HOW MANY MONTHS DID THE DECEASED WORK IN THE RAILROAD INDUSTRY AFTER 1936?

(2) HOW MANY MONTHS DID THE DECEASED WORK IN THE RAILROAD INDUSTRY BEFORE 1937? (If none, enter "NONE.")

(3) DID THE DECEASED WORK IN THE RAILROAD INDUSTRY DURING THE LAST 18 MONTHS?

☐ YES ☒ NO

(If "yes," also complete C below)

(4) IF THE DECEASED'S RAILROAD SERVICE TOTALS AT LEAST 120 MONTHS, HAD THE DECEASED EVER FILED A CLAIM FOR A DISABILITY OR RETIREMENT ANNUITY WITH THE RAILROAD RETIREMENT BOARD?

☐ YES ☒ NO

IF "yes", ENTER HIS R. R. B. CLAIM NUMBER HERE:

(5) HAS ANY SURVIVOR OF THE DECEASED EVER RECEIVED A LUMP-SUM OR RESIDUAL PAYMENT OR A SURVIVOR'S MONTHLY ANNUITY FROM THE RAILROAD RETIREMENT BOARD?

☐ YES ☒ NO

(If "yes," also complete D below)

(6) IF THE DECEASED EVER FILED AN APPLICATION FOR SOCIAL SECURITY BENEFITS, DID HE WORK IN THE RAILROAD INDUSTRY AT ANY TIME AFTER HE FILED FOR SOCIAL SECURITY BENEFITS?

☐ YES ☒ NO

(If "yes," also complete C below)

B: To be completed whenever a claim for Social Security benefits is filed and the claimant or claimant's spouse worked in the railroad industry on or after January 1, 1937.

(1) NAME OF PERSON HAVING RAILROAD EMPLOYMENT

Lionel J. Bastien

SOCIAL SECURITY NUMBER

079-16-5221

(2) HOW MANY MONTHS DID THE PERSON NAMED IN B(1) ABOVE WORK IN THE RAILROAD INDUSTRY AFTER 1936?

4 hrs total

(3) HOW MANY MONTHS DID THE PERSON NAMED IN B(1) ABOVE WORK IN THE RAILROAD INDUSTRY BEFORE 1937? (If none, enter "NONE.")

none

(4) DID THE PERSON NAMED IN B(1) ABOVE WORK IN THE RAILROAD INDUSTRY DURING THE LAST 18 MONTHS?

☐ YES ☒ NO

(If "yes," also complete C below)

(5) IF THE RAILROAD SERVICE TOTALS AT LEAST 120 MONTHS, DID THE PERSON NAMED ABOVE EVER FILE A CLAIM FOR A DISABILITY OR RETIREMENT ANNUITY WITH THE RAILROAD RETIREMENT BOARD?

☐ YES ☒ NO

IF "YES," ENTER THE R. R. B. CLAIM NUMBER HERE:

(6) DID THE PERSON NAMED IN B(1) ABOVE RECEIVE ANY RAILROAD SICKNESS BENEFITS OR ANY RAILROAD UNEMPLOYMENT BENEFITS DURING THE LAST 18 MONTHS?

☐ YES ☒ NO

C: To be completed if item A(3) or A(6) or B(4) is checked "Yes".

NAME OF RAILROAD EMPLOYER

FROM

TO

WORK LOCATION

DEPARTMENT AND OCCUPATION

D: To be completed when the claimant for Social Security benefits has received a lump-sum from the R.R.B. or has received or is receiving a monthly R.R.B. annuity based on another individual's railroad employment.

(1) NAME OF SOCIAL SECURITY CLAIMANT - R.R.B. ANNUITANT

(2) R.R.B. CLAIM NUMBER

(3) NAME AND SOCIAL SECURITY NUMBER OF RAILROAD EMPLOYEE ON WHOSE RECORD THE R.R.B. CLAIM WAS FILED

SOCIAL SECURITY NUMBER

(4) RELATIONSHIP OF SOCIAL SECURITY CLAIMANT TO RAILROAD EMPLOYEE (wife, widow, parent, child, etc.)

(5) TYPE OF RRB BENEFIT (monthly, lump-sum, or residual)

(6) HAS THE RAILROAD RETIREMENT BOARD NOTIFIED THE ABOVE SOCIAL SECURITY CLAIMANT - R.R.B. ANNUITANT THAT THE AMOUNT OF HIS OR HER R.R.B. ANNUITY MAY BE AFFECTED BY ENTITLEMENT TO SOCIAL SECURITY BENEFITS?

☐ YES ☒ NO

REMARKS:

☐ SEE REVERSE FOR ADDITIONAL REMARKS

Exhibit-12

A 107



MEDICAL HISTORY AND DISABILITY REPORT

(Please type or print clearly)

Form Approved.
OMB No. R-0554

PLEASE COMPLETE THIS FORM. COMPLETE ANSWERS WILL AID IN THE PROMPT PROCESSING OF YOUR CLAIM. If you are filing on behalf of someone else, enter his or her name and social security number in the space provided and answer all questions.

NAME OF CLAIMANT <i>Lionel J. Bastien</i>		SOCIAL SECURITY NUMBER <i>079-16-5221</i>
AGE LAST BIRTHDAY <i>53</i>	EDUCATION (Highest grade completed) <i>8th</i>	TRADE SCHOOLS, SERVICE SCHOOLS OR JOB TRAINING <i>cook</i>
		<i>97</i>

WHAT IS CLAIMANT'S ILLNESS OR INJURY?

Arthritis of back + hands

I.A. When did your illness or injury first bother you?

MONTH, DAY, YEAR

1968

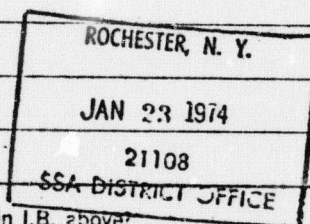
B. When did your illness or injury finally prevent you from working? ..

MONTH, DAY, YEAR

6/29/73

C. Explain why you stopped working.

I sustained an injury at work in 1968 / since that time, has seen many doctors and my condition has worsened - I had several accidents since then and now have arthritis in the back and in my hands



D. Did you return to work after the date shown in I.B. above? ☒ Yes ☐ No

Answer this question only if the dates in I.A. and B. above are not the same.

E. Before you stopped working, did your illness or injury cause you to change:

Your job or job duties? ☒ Yes ☐ No

Your hours of work? ☒ Yes ☐ No

Your attendance? ☒ Yes ☐ No

(Explain how your condition caused these changes and show the dates the changes were made).

changed jobs because of union and due to illness - went from a checker's job to working with fork lift and moving crates, etc.

In 1970 out for 10 mos due to injury; and in 1973 out for 8 weeks.

II.A. List the name, address and telephone number of the doctor who has your latest medical records.

If you have no doctor, check here ☐

NAME Dr. Sewall Milbo Jr ADDRESS _____
AREA CODE AND TELEPHONE NUMBER 716-546-7880

HOW OFTEN DO YOU SEE HIM? Once a month DATE YOU FIRST SAW HIM Feb 23/73 DATE YOU LAST SAW HIM Jan 9/74

REASONS FOR VISITS Checks up and the compensation wanted
more information about my injury
TYPE OF TREATMENT RECEIVED Examination + medication + exercises

B. Have you seen any other doctor since your illness or injury began? ☒ Yes ☐ No
If "Yes," show the following:

NAME Lloyd H. Love ADDRESS 1540 Clifford Ave
AREA CODE AND TELEPHONE NUMBER 1-716-544-3445 Rochester, N.Y.

HOW OFTEN DO YOU SEE HIM? ? DATE YOU FIRST SAW HIM 1968 DATE YOU LAST SAW HIM 1969

REASONS FOR VISITS Back injury -
TYPE OF TREATMENT RECEIVED Heat treatments

If you have seen other doctors since your illness began, list their names, addresses, dates and reasons for visits on Page 5.

C. Have you been hospitalized or treated at a clinic for your illness or injury? ... ☒ Yes ☐ No
If "Yes," show the following:

NAME OF HOSPITAL OR CLINIC Highland Hospital ADDRESS South Ave + Belknap Dr
PATIENT OR CLINIC NUMBER _____ Rochester, N.Y.

WERE YOU AN INPATIENT? (STAYED AT LEAST OVERNIGHT) ☒ Yes ☐ No IF "YES," 4 days DATES OF ADMISSIONS 1970 DATES OF DISCHARGES 1970
WERE YOU AN OUTPATIENT? ☐ Yes ☐ No IF "YES," _____ DATES OF VISITS _____

REASON FOR HOSPITALIZATION OR CLINIC VISITS To have a myelogram performed on back.
TYPE OF TREATMENT RECEIVED Therapy on neck

If you have been in other hospitals or clinics for your illness or injury, list the names, addresses, patient or clinic numbers, dates and reasons for hospitalization or clinic visits on Page 5.

D. Have you been seen by other agencies for your injury or illness? ☒ Yes ☐ No
(VA, Workmen's Compensation, Vocational Rehabilitation, Welfare, etc.)
If "Yes," show the following:

NAME OF AGENCY Employers Insurance of Wausau ADDRESS OF AGENCY 57 Monroe Ave
YOUR CLAIM NUMBER WBC Case No - 76805804 - Corner Co No D64-36461 Pittsford, N.Y.
DATES OF VISITS -77302-530-D64 56114

TYPE OF TREATMENT OR EXAMINATION RECEIVED Regular

If more space is needed, list the other agencies, their addresses, your claim numbers, dates, and treatment received on Page 5.

III. Has your doctor told you to restrict your activities in any way? ☒ Yes ☐ No
 If "Yes," give the name of the doctor and state what he told you about restricting your activities.

Dr. Sewall Miller Jr.

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I am not to do any heavy lifting or bending over, or reaching over my head.

IV. Are your home duties, social activities or ability to care for your personal needs limited in any way? ☐ Yes ☒ No
 If "Yes," describe how and why they are limited.

V. List all regular jobs you have had in the last 15 years before you stopped working (If you are 55 or older, AND have a 6th grade education or less, AND performed only heavy unskilled labor in the last 15 years, list all of the jobs you have had since you began to work. If you need more space, use page 5.)

JOB TITLE	TYPE OF BUSINESS	DATES WORKED (Month and Year)		DAYS PER WEEK	RATE OF PAY (Per hour, day, week, month or year)
		FROM	TO		
Checker	R.T. French Co	2/21/51	6/29/73	5	\$488 ¹ / ₂ hr
Checker + Packing	VWR - Scientific	11/5/73	11/8/74	5	\$312 ¹ / ₂ hr

VIA. What was your usual job in the 15 years before you stopped working? (Usually this will be the kind of work you did for the longest period of time.)

(JOB TITLE)

Checker + Bulk picker

B. Describe the duties of your usual job in your own words:

It was a good job good pay, a little dangerous when I had to go 10' or 15' in the air for stock with my Bulk picker, I had to ride the machine up + down and bring orders to marshalling Area.

(CONTINUES ON TOP OF PAGE 4)

A 110

VI.B. (Cont.)

C. Did your usual job involve:

1. The use of machines, tools, or equipment ☒ Yes ☐ No
 2. Technical knowledge or special skills ☒ Yes ☐ No
 3. Any supervisory responsibilities ☐ Yes ☒ No

Please Explain All "Yes" Answers.

I drove a Order picker - something like a fork lift - only you rode on a platform standing up.
 Not every one could drive this machine I had to take a test to qualify.

D. Please describe the kind and amount of physical activity involved in your job during a typical work day (circle number of hours in a day).

1. WALKING	2. STANDING	3. SITTING
0 (1) 2 3 4 5 6 7 8	0 1 2 3 4 5 6 7 (8)	(0) 1 2 3 (4) 5 6 7 8

Lifting and carrying (describe what was lifted, how heavy it was, how often it was lifted, and how far it was carried).

drums from 10th to 57th I handle these and put on pallet.

VII. How does your illness or injury now prevent you from performing your usual job duties as described in Item VIB?

I can not do any lifting or bending over or reaching upward. I was phased out from the R.T. I send Co June 30th 1973 - I could not get any employment they say I'm a bad risk I was even let go from VWR Scientific, they knew my condition when they hired me - I work there 11/5/73 To 11/15/73 - they gave me 2 weeks notice & let me go.

If you need more space for any answer, use Page 5.

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VIII. Use this section for additional space to answer any previous questions and any additional information that you think will be helpful in making a decision in your disability claim. Please refer to the previous questions by number, such as IIB (other Doctors), V (Other Jobs)

After waiting 4 months to get it Xerox 101 they called me to go to work and the Dr. Rejected me - he rejected me for the job I was gonna get an S9 - or any other job!

Dr. Lloyd H Love 1968 + 1969

1540 Clifford Ave

Rochester, N. Y. Phone 1-716-544-3445

Treatment at Office, Plus X ray at General Hospital

1425 Portland Ave

Rochester, N. Y. Phone 1-716-338-4000

Dr. Leonard L Zinker 1969 or 70

277 Alexander St

Rochester, N. Y. Phone 1-716-454-7855

Dr. Fred Geib 1964 or 1970

1100 Park Ave

Rochester, N. Y. Phone 1-716-271-6977

Offices Calls - admitted to Highland Hospital for 4 days to have a miligram also had much therapy. Highland Hospital

South Ave at Bellevue Dr

Rochester, N. Y. Phone 1-716-473-2200

Dr. Alexandra Feldman 1970 + 1971

1501 East Ave

Rochester, N. Y. Phone 1-716-473-1336

Office Calls, examinations, treatments
medication, recommended for operation on
right hand.

Dr Roger H Miller
1299 Portland Ave

Rochester, N.Y. Phone 1-716-544-1580

had operation in Oct 1970 released back to Alexander
Feldman in Jan of 1971 for therapy & treatment
Feb 22 of 1973 hurt back on job went to emergency
at Genesee Hospital took X rays advised me to
see Dr Sewall Miller. Saw Dr Miller took more
X rays under his care until May 14 of 73
made appointment for me to see Dr William W
Cotanch 1501 East Ave

Rochester, N.Y. 1-716-473-2500

was admitted to Genesee Hosp. for 4 days; had
a Strinigrum taken was released back to Dr Sewall
Miller; went to Compensation hearing Jan 3rd 1974
postpone hearing for 2 months. had me go back to Dr
Sewall Miller for Complete Examination. Jan 9th of 1974
saw Dr Miller, had X rays taken, also had blood test
and different test - Dr Miller told me he was sending
in his report to Workmen's Compensation Board for disability
on account of what he found and my conditions

Knowing that anyone making a false statement or representation of a material fact for use in determining
a right to payment under the Social Security Act commits a crime punishable under Federal Law, I certify
that the above statements are true.

NAME (SIGNATURE OF CLAIMANT OR PERSON FILING ON HIS BEHALF)

DATE

SIGN
HERE

Leonel J Boster

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FOR SSA USE ONLY—DO NOT WRITE BELOW THIS LINE

NAME OF CLAIMANT

SOCIAL SECURITY NUMBER

Lionel J. Bastien

079-16-5221, 103

IX.A. Observations

5'7 1/2" — 185 lbs.

B. Claimant requires assistance
If "Yes," show name, address, phone number and relationship of interested person.

☐ Yes

☐ No

FOR SSA USE ONLY—DO NOT WRITE BELOW THIS LINE

C. 1. MEDICAL DEVELOPMENT—NON SD

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SOURCE	DATE REQUESTED	DATE FOLLOW UP	DATE RECEIVED

2. MEDICAL DEVELOPMENT—SD

SOURCE		CAPABILITY DEVELOPMENT NEEDED:
DATE REQUESTED	DATE RECEIVED	☐ YES ☐ NO
		☐ DO WILL UNDERTAKE
		☐ SA SHOULD UNDERTAKE
SOURCE		CAPABILITY DEVELOPMENT NEEDED:
DATE REQUESTED	DATE RECEIVED	☐ YES ☐ NO
		☐ DO WILL UNDERTAKE
		☐ SA SHOULD UNDERTAKE
SOURCE		CAPABILITY DEVELOPMENT NEEDED:
DATE REQUESTED	DATE RECEIVED	☐ YES ☐ NO
		☐ DO WILL UNDERTAKE
		☐ SA SHOULD UNDERTAKE

D. To DO Interviewer or Reviewer:

- Disregard this item when a reconsideration request is being filed.
- For DO completed form.
If any block, D1-D5 is checked by DO interviewer, omit sections III-VII of this form in accordance with CM 6513.9D.
- In reviewing a claimant-completed form, if it appears from the SSA-821, the complete SSA-401 or DO observation that a condition in D1-D5 is present, proceed in accordance with CM 6513.9D.

- ☐ Is now working for more than the SGA earnings guideline described in CM 6403(a).
- ☐ Is now in a hospital because of the disabling impairment. (Do not check if on convalescent leave or in a nursing home, or expects to be released from the hospital in the next 2 weeks.)
- ☐ Has lost the complete use of 2 or more limbs.
- ☐ Has lost a leg or a foot because of diabetes or circulatory disease.
- ☐ Is unable to see, even with glasses.
☐ Is unable to hear, even with a hearing aid.
☐ Is unable to speak.

E. SSA-401 TAKEN BY

- ☐ PERSONAL INTERVIEW
☐ TELEPHONE ☐ MAIL

FORM SUPPLEMENTED ☐ YES ☐ NO

If "Yes," by

- ☐ PERSONAL INTERVIEW ☐ TELEPHONE ☐ MAIL

F. SIGNATURE OF INTERVIEWER OR REVIEWER

TITLE

DO OR BO

DATE

A 115

WORK ACTIVITY REPORT
Complete for all initial cases with work activity after onset, and in continuing disability cases with work activity. (See CM 6400ff, 5185ff)

WAGE EARNER'S NAME: Worrel J. Bastien

SOCIAL SECURITY NUMBER: 074-16-5221

DATE: 1-21-74

OFFICE: SSA DO108 Rochester

NAME AND SOCIAL SECURITY NUMBER OF DISABLED PERSON (If other than Wage Earner):

PERSON CONTACTED: ☒ CLAIMANT ☐ OTHER (If other, show name, address and relationship to claimant)

INTERVIEWER'S SIGNATURE: ☒ CR ☐ FR ☐ OTHER (Specify) Marsha C. Cunningham

PART I - WORK AS AN EMPLOYEE

A. WORK ATTENDANCE

	DATES WORKED		AVERAGE HOURS PER DAY	AVERAGE DAYS PER WEEK
	STARTED (month, day, year)	ENDED (month, day, year)		
	<u>10 / 1 / 73</u>	<u>4 days</u>	<u>8</u>	<u>4</u>
	<u>11 / 5 / 73</u>	<u>1 / 18 / 74</u>	<u>9</u>	<u>5 1/2</u>

B. EARNINGS

	STARTING WAGES	PER HOUR		ENDING WAGES	PER DAY		PER MONTH
		PER HOUR	PER DAY		PER DAY	PER MONTH	
			<u>25.00</u>		<u>25.00</u>		
			<u>25.00</u>		<u>25.00</u>		

TIPS

"IN KIND" (explain)

OTHER (explain)

C. EMPLOYER

NAME, ADDRESS, PHONE NUMBER OF EMPLOYER: VWR 431 Greenleaf St. Rochester, N.Y.

D. HOW JOB WAS OBTAINED

Applied thru newspaper ad

E. WORK STOPPAGE

CLAIMANT STOPPED WORKING: ☒ YES ☐ NO (If "NO", give date and explain reason for work stoppage)

Stopped work due to back - Employer considered him incompetent

CHECK IF ONE OF THE FOLLOWING APPLIES (If one of the items is checked, do not complete the remainder of Part I)

- ☒ Claimant worked 3 months or less and stopped working because of impairment, or removal of special conditions.
- ☐ Claimant's earnings as an employee do not exceed \$90 per month.
- ☐ Claimant works in sheltered employment (e.g., sheltered workshop, VA domiciliary) and his earnings do not exceed \$140 per month.
- ☐ Claimant's earnings as an employee exceed \$200 per month and there is no evidence of "substantial" subsidy.
- ☐ In initial case, claimant returned to a job that is described in Section VI (Principal Job) on SSA-401 and there is no change in duties, or special conditions.

EXHIBIT NO. - 14 (4 pages)

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COMPLETE IF NO BLOCK (1 through 5) ON PRECEDING PAGE IS CHECKED

JOB TITLE

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F. JOB DUTIES:

(List duties claimant performs in a typical day, giving percentage of day spent on each duty)

☐ Childhood disability case

☐ Mental impairment involved

☐ Sheltered employment

☐ An allegation is made that the claimant does not fully earn his pay

☐ The claimant's job duties differ from those of regular employees

☐ The claimant's hours of work differ from those of regular employees

☐ The amount of assistance received by the claimant differs from that of regular employees

☐ The claimant's work differs in quality or quantity from that of regular employees

☐ The claimant receives special considerations in the performance of his work

☐ Other indications of subsidy (explain)

☐ None

G. SUBSIDY:

(Check if any of these items apply. If any of the items are checked, develop subsidy with the employer per CM 6421)

Do the claimant's earnings average between \$90-\$140 per month in non-sheltered employment after deducting any subsidy? ☐ Yes ☐ No

If "Yes," is the claimant's work comparable to that of unimpaired persons in the community engaged in similar occupations as their means of livelihood, or is the claimant's work reasonably worth over \$140 a month according to pay scales in his community. Explain answer in sufficient detail.

H. COMPARABILITY
(CM 6422)

REMARKS (Record any unusual aspects of case)

A 117

PART II - COMPLETE IF CLAIMANT SELF-EMPLOYED §§ 6430ff OR WORKS IN A FAMILY OR CLOSE CORPORATION (§§ 5185ff)

107

TYPE OF WORK		☐ NON-FARM SELF-EMPLOYED		☐ FARM SELF-EMPLOYED		☐ CORPORATION OFFICER	
NON-FARM BUSINESS		NO. OF EMPLOYEES (Farm and non-farm)		FARM		NO. OF ACRES	
☐ SOLE OWNER		FULL TIME		☐ SOLE OWNER		CULTIVATED	
☐ PARTNER		PART TIME		☐ PARTNER		PASTURE	
☐ CORPORATION OFFICER				☐ TENANT		FALLOW	
						TYPE OF CROPS	
						TYPE AND SIZE OF FLOCKS AND HERDS	

WORK ATTENDANCE (Dates Worked)		SELF-EMPLOYMENT INCOME		CORPORATION OFFICER	
STARTED (Month, day, year)	ENDED (Month, day, year)	GROSS THIS YEAR	\$	SALARY THIS YEAR	\$
/ /	/ /	NET THIS YEAR	\$	OTHER INCOME THIS YEAR	\$
/ /	/ /	GROSS LAST YEAR	\$	SALARY LAST YEAR	\$
/ /	/ /	NET LAST YEAR	\$	OTHER INCOME LAST YEAR	\$

CHECK IF ONE OF THE FOLLOWING APPLIES (If one of the items is checked, do not complete remainder of form)

☐ Claimant worked 3 months or less and stopped because of impairment or removal of special conditions

☐ In initial case, claimant returned to a job that is described in Section VI (Principal Job) on a SSA-401 and there is no change in duties, or special conditions.

☐ Claimant is a farm landlord AND (1) he is materially participating in the farm operations, AND (2) there has been no significant reduction in his activities, AND (3) his earnings average over \$140 per month.

A. CHANGES IN OPERATION SINCE ONSET (Explain and give date such changes occurred for each checked item.)	HAVE THERE BEEN ANY CHANGES IN ANY OF THE FOLLOWING SINCE ONSET?			
	NON-FARM BUSINESS		FARM	
	Volume of Business	☐ Yes ☐ No	Size of Farm Operations	☐ Yes ☐ No
	Inventory	☐ Yes ☐ No	Acres under Cultivation	☐ Yes ☐ No
	Income Gross	☐ Yes ☐ No	Size of Herds or Flocks	☐ Yes ☐ No
	Income Net	☐ Yes ☐ No	Income Gross	☐ Yes ☐ No
	Number of Employees	☐ Yes ☐ No	Income Net	☐ Yes ☐ No
	Hours Business Open	☐ Yes ☐ No	Number of Employees	☐ Yes ☐ No
REMARKS				

B. MANAGEMENT DECISIONS (Explain and describe management services of claimant and others)	Does claimant make management decisions?	☐ Yes ☐ No
	How much time does claimant devote to management services?	
	Are management services rendered by others?	☐ Yes ☐ No
	(If "Yes," by whom, for how much time, and describe such services)	

A 118

PART II (Continued)-Describe any other services rendered by claimant in operation of business and show time and percentage of time spent in each activity.

C. OTHER SERVICES

108

Explain any changes since onset and give date of occurrence.

Explain nature of assistance •

D. ASSISTANCE RECEIVED

Why was assistance given •

How many assistants •

How much time does assistant(s) devote to farm or business •

Describe duties of assistants •

Was payment made for this assistance
If "Yes," how much and to whom •

Is there any relationship between claimant and assistants •

Estimate of value of unpaid assistance
(use prevailing local wage rates) •

How does business compare with similar ones in the same area

Size •

Type •

Hours of business or farm operation •

E. OTHER FACTORS
(Complete in all cases)

REMARKS (Record any unusual aspects of case)

A 119



MEDICAL HISTORY AND DISABILITY REPORT
(Please type or print clearly)

PLEASE COMPLETE THIS FORM. COMPLETE ANSWERS WILL AID IN THE PROMPT PROCESSING OF YOUR CLAIM. If you are filing on behalf of someone else, enter his or her name and social security number in the space provided and answer all questions.

NAME OF CLAIMANT Lionel J. Bastien		SOCIAL SECURITY NUMBER 679-16-5231
AGE LAST BIRTHDAY 54	EDUCATION (Highest grade completed) 8	TRADE SCHOOLS, SERVICE SCHOOLS OR JOB TRAINING none 109

WHAT IS CLAIMANT'S ILLNESS OR INJURY?

arthritis

I.A. When did your illness or injury first bother you?

MONTH, DAY, YEAR
2/22/73

B. When did your illness or injury finally prevent you from working? ..

MONTH, DAY, YEAR
1/74

C. Explain why you stopped working.

I was laid off in 6/73 and my employer left town. I collected unemployment ins. till I found another job in 11/73. I worked till 1/74 at which time I was let go as the employer felt that I was an insurance risk. I was able to do the work but I had to push myself to do it.

D. Did you return to work after the date shown in I.B. above?

☐ Yes ☒ No

Answer this question only if the dates in I.A. and B. above are not the same.

E. Before you stopped working, did your illness or injury cause you to change:

Your job or job duties?

☐ Yes ☒ No

Your hours of work?

☐ Yes ☒ No

Your attendance?

☒ Yes ☐ No

(Explain how your condition caused these changes and show the dates the changes were made).

I was out of work 10 mos. in '70 due to hand surgery.

A

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13 (8 PAGES)

II.A. List the name, address and telephone number of the doctor who has your latest medical records.

If you have no doctor, check here ☐

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NAME <u>Dr. D. Aseval Miller Jr.</u>		ADDRESS <u>220 Alexander St.</u>	
AREA CODE AND TELEPHONE NUMBER <u>716-546-7880</u>		<u>Rochester NY 14607</u>	
HOW OFTEN DO YOU SEE HIM? <u>every 2-4 weeks</u>	DATE YOU FIRST SAW HIM <u>2/74</u>	DATE YOU LAST SAW HIM <u>6/74</u>	
REASONS FOR VISITS <u>orthopaedic surgeon</u>			

TYPE OF TREATMENT RECEIVED

medication

B. Have you seen any other doctor since your illness or injury began? ☐ Yes ☒ No
If "Yes," show the following:

NAME		ADDRESS	
AREA CODE AND TELEPHONE NUMBER			
HOW OFTEN DO YOU SEE HIM?	DATE YOU FIRST SAW HIM	DATE YOU LAST SAW HIM	
REASONS FOR VISITS			
TYPE OF TREATMENT RECEIVED			

If you have seen other doctors since your illness began, list their names, addresses, dates and reasons for visits on Page 5.

C. Have you been hospitalized or treated at a clinic for your illness or injury? ... ☐ Yes ☒ No
If "Yes," show the following:

NAME OF HOSPITAL OR CLINIC		ADDRESS	
PATIENT OR CLINIC NUMBER			
WERE YOU AN INPATIENT? (STAYED AT LEAST OVERNIGHT?) ☐ Yes ☐ No IF "YES,"		DATES OF ADMISSIONS	DATES OF DISCHARGES
WERE YOU AN OUT PATIENT? ☐ Yes ☐ No IF "YES,"		DATES OF VISITS	
REASON FOR HOSPITALIZATION OR CLINIC VISITS			
TYPE OF TREATMENT RECEIVED			

If you have been in other hospitals or clinics for your illness or injury, list the names, addresses, patient or clinic numbers, dates and reasons for hospitalization or clinic visits on Page 5.

D. Have you been seen by other agencies for your injury or illness? ☒ Yes ☐ No
(VA, Workmen's Compensation, Vocational Rehabilitation, Welfare, etc.)
If "Yes," show the following:

NAME OF AGENCY <u>Workmens Corp</u>		ADDRESS OF AGENCY <u>155 W. Main St.</u>	
YOUR CLAIM NUMBER		<u>Rochester NY 14614</u>	
DATES OF VISITS			
TYPE OF TREATMENT OR EXAMINATION RECEIVED			

If more space is needed, list the other agencies, their addresses, your claim numbers, dates, and treatment received on Page 5.

III. Has your doctor told you to restrict your activities in any way? ☒ Yes ☐ No
 If "Yes," give the name of the doctor and state what he told you about restricting your activities.

no lifting, bending

111

IV. Are your home duties, social activities or ability to care for your personal needs limited in any way? ☒ Yes ☐ No
 If "Yes," describe how and why they are limited.

no yard work,

V. List all regular jobs you have had in the last 15 years before you stopped working. (If you are 55 or older, AND have a 6th grade education or less, AND performed only heavy unskilled labor in the last 15 years, list all of the jobs you have had since you began to work. If you need more space, use page 5.)

JOB TITLE	TYPE OF BUSINESS	DATES WORKED (Month and Year)		DAYS PER WEEK	RATE OF PAY (Per hour, day, week, month or year)
		FROM	TO		
<i>bulk checker - I drove a fork lift</i>					
<i>& pick orders</i>					

VI.A. What was your usual job in the 15 years before you stopped working? (Usually this will be the kind of work you did for the longest period of time.)

(JOB TITLE)

B. Describe the duties of your usual job in your own words:

(CONTINUES ON TOP OF PAGE 4)

VI.B. (Cont.)

112

C. Did your usual job involve:

1. The use of machines, tools, or equipment

☐ Yes

☐ No

2. Technical knowledge or special skills

☐ Yes

☐ No

3. Any supervisory responsibilities

☐ Yes

☐ No

Please Explain All "Yes" Answers.

D. Please describe the kind and amount of physical activity involved in your job during a typical work day (circle number of hours in a day).

1. WALKING

0 1 2 3 4 5 6 7 8

2. STANDING

0 1 2 3 4 5 6 7 8

3. SITTING

0 1 2 3 4 5 6 7 8

Lifting and carrying (describe what was lifted, how heavy it was, how often it was lifted, and how far it was carried).

VII. How does your illness or injury now prevent you from performing your usual job duties as described in Item VIB?

If you need more space for any answer, use Page 5.

VIII. Use this section for additional space to answer any previous questions and any additional information that you think will be helpful in making a decision in your disability claim. Please refer to the previous questions by number, such as IIB (other Doctors), V (Other Jobs)

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Knowing that anyone making a false statement or representation of a material fact for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal Law, I certify that the above statements are true.

NAME (SIGNATURE OF CLAIMANT OR PERSON FILING ON HIS BEHALF)

DATE

SIGN
HERE

Samuel J. Bustin

7/10/74

6

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FOR SSA USE ONLY—DO NOT WRITE BELOW THIS LINE

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NAME OF CLAIMANT

Leonel J. Bastien

SOCIAL SECURITY NUMBER

079-16-5221

IX.A. Observations

Observations section with multiple horizontal lines for text entry.

B. Claimant requires assistance
If "Yes," show name, address, phone number and relationship of interested person.

☐ Yes

☒ No

FOR SSA USE ONLY—DO NOT WRITE BELOW THIS LINE

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C. 1. MEDICAL DEVELOPMENT—NON SD

SOURCE	DATE REQUESTED	DATE FOLLOW-UP	DATE RECEIVED

2. MEDICAL DEVELOPMENT—SD

SOURCE		CAPABILITY DEVELOPMENT NEEDED: ☐ YES ☐ NO	
DATE REQUESTED	DATE RECEIVED	☐ DO WILL UNDERTAKE ☐ SA SHOULD UNDERTAKE	
SOURCE		CAPABILITY DEVELOPMENT NEEDED: ☐ YES ☐ NO	
DATE REQUESTED	DATE RECEIVED	☐ DO WILL UNDERTAKE ☐ SA SHOULD UNDERTAKE	
SOURCE		CAPABILITY DEVELOPMENT NEEDED: ☐ YES ☐ NO	
DATE REQUESTED	DATE RECEIVED	☐ DO WILL UNDERTAKE ☐ SA SHOULD UNDERTAKE	

D. To DO Interviewer or Reviewer:

- Disregard this item when a reconsideration request is being filed.

- For DO completed form.

If any block, D1-D5 is checked by DO interviewer, omit sections III-VII of this form in accordance with CM 6513.9D.

- In reviewing a claimant-completed form, if it appears from the SSA-821, the complete SSA-401 or DO observation that a condition in D1-D5 is present, proceed in accordance with CM 6513.9D.

- ☐ Is now working for more than the SGA earnings guideline described in CM 6403(a).
- ☐ Is now in a hospital because of the disabling impairment. (Do not check if on convalescent leave or in a nursing home, or expects to be released from the hospital in the next 2 weeks.)
- ☐ Has lost the complete use of 2 or more limbs.
- ☐ Has lost a leg or a foot because of diabetes or circulatory disease.
- ☐ Is unable to see, even with glasses.
☐ Is unable to hear, even with a hearing aid.
☐ Is unable to speak.

E. SSA-401 TAKEN BY

☒ PERSONAL INTERVIEW

☐ TELEPHONE

☐ MAIL

FORM SUPPLEMENTED

☐ YES

☐ NO

If "Yes," by

☐ PERSONAL INTERVIEW

☐ TELEPHONE

☐ MAIL

F. SIGNATURE OF INTERVIEWER OR REVIEWER

TS padoni

TITLE

Ch.

DO OR DO

Rochester NY

DATE

7/10/74

A 127



NEW YORK STATE DEPARTMENT OF LABOR
Unemployment Insurance Division

SUMMARY OF INTERVIEW

ISSUE:

A & C

LOC. OF BIRTH	051	0	7	9	1	6	5	2	2	1
NAME	Isabel J. Pastion									
MARRIED			AGES OF CHILDREN		UNION LOCAL		117			
WAGES LAST JOB		PER		HOURS PER DAY		DAYS PER WEEK				
5										

On my last visit to my doctor, Sewell Miller, Jr. MD, 220 Alexander St., on 6-21-74, he told me at that time he was going to put me in for 100% disability for Social Security purposes. I knew that this would take some time for the papers to be processed, and because I needed the money, I continued to look for work. I take 17 pills per day to medicate for my condition, which is advanced thoracic lumbar arthritis, but felt that with this medication I could work to a limited extent, as indicated by my doctor in previous medical reports to this office. On 7-3-74, I contacted the doctor's office to find if and when the papers had been or were going to be processed, and his stenographer told me that she had written the papers on 6-25-74 and they were processed on that day. My condition is a result of injuries at R T French Company, in 1968, 1970 and 1972, and I have a compensation case (Trial) pending for 8-26-74, for compensation purposes. I certified for benefits (unemployment insurance) on 7-3-74, not knowing that the doctor had put me in for total disability on 6-25-74. When I certified, I felt that I had been able to work on the weekending 6-30-74. Previously my doctor told this office that I could do light work, no lifting, or heavy work, and I thought I could still do that kind of work weekending 6-30-74. Since I learned that my doctor has indicated that I cannot work as of 6-25-74, I feel that I have to go along with him in this. That is why I am returning the benefit check for the weekending 6-30-74. I am not now able to work and do not claim any further Unemployment benefits.

DATE	7-10-74	PAGE NO.	1
------	---------	----------	---

LO 413 (10-72)

Isabel J. Pastion

J. R. Miller

A 128

Exhibit 16



DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved.
OMB No. 72-R0442

118

STATEMENT OF CLAIMANT OR OTHER PERSON

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON <u>Lionel J. Bastien</u>	SOCIAL SECURITY NUMBER <u>019-16-5221</u>
NAME OF PERSON MAKING STATEMENT (If other than above wage earner or self-employed person)	RELATIONSHIP TO WAGE EARNER OR SELF-EMPLOYED PERSON

Understanding that this statement is for the use of the Social Security Administration, I hereby certify that—

I ache all over — I can't bend —
My arms & fingers swell up from
arthritis — I had an operation on my left
hand — I was having trouble gripping
& holding things so they did an operation on
my hand. I am not to lift my arms over my head.
I take medication for pain all the
time. Since 7/74 it seems my
condition has worsened. The pain
seems worse and does the stiffness.
I get severe headaches about once a
week — they wake me up during the
nite and then I can't sleep. I take
aspirin for this.

I take water pills — I take high
blood pressure pills.

I see Mr. Santo F. Brancato
1771 Culver Rd. Rochester N.Y. 14609
716-482-8605 about once a month.

~~He~~ knows this is my family doctor. He

Form SSA-795 (1-74)

(OVER)

EXhibit- 17 (4 pages)

A 129

treats me for HBP and a diabetic condition. I have to eat less sweets. I see Dr. D. Small Miller Jr. 220 Alexander St. Rochester NY. 14607 716-546-7880 since about 3/73. He treats me for back problems + arthritis. I see Dr. Miller every 1st 3 months. He knows the most about my back & arthritis.

The workmen's compensation has awarded me benefits due to my back trouble. I have been awarded 33 1/2 % of my average monthly wage. WC has info on my back they are at 135 W. Main St Rochester NY 14614. I worked 11/5/73 - 1/14/74 at VWR 100 Glenkaf St Rochester NY. I am a

I know that anyone making a false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal law. I affirm that the above statements are true.

SIGNATURE OF PERSON MAKING STATEMENT

Signature (First name, middle initial, last name) (Write in ink)

Date (Month, day, year)

11/21/74

SIGN
HERE

Telephone Number

716-288-8216

Mailing Address (Number and street, Apt. No. P.O. Box, Rural Route)

628 Garden Av.

City and State

Rochester NY

ZIP Code

14609

Enter Name of County (if any) in which you now live

Monroe

Witnesses are required ONLY if this statement has been signed by mark (X) above. If signed by mark (X), two witnesses to the signing who know the individual must sign below, giving their full addresses.

1. Signature of Witness

2. Signature of Witness

Address (Number and street, City, State, and ZIP Code)

Address (Number and street, City, State, and ZIP Code)

A 130



(2)

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved,
OMB No. 72-R0442

120

STATEMENT OF CLAIMANT OR OTHER PERSON

NAME OF WAGE EARNER OR SELF-EMPLOYED PERSON <u>Harold J. Baslin</u>	SOCIAL SECURITY NUMBER <u>079-16-5221</u>
NAME OF PERSON MAKING STATEMENT (If other than above wage earner or self-employed person)	RELATIONSHIP TO WAGE EARNER OR SELF-EMPLOYED PERSON

Understanding that this statement is for the use of the Social Security Administration, I hereby certify that—

packed of scientific instruments.
They let me go as I was a bad
risk.

I know that anyone making a false statement or representation of a material fact in an application or for use in determining a right to payment under the Social Security Act commits a crime punishable under Federal law. I affirm that the above statements are true.

SIGNATURE OF PERSON MAKING STATEMENT

Signature (First name, middle initial, last name) (Write in ink)

Date (Month, day, year)

11/21/74

Telephone Number

716-288-8216

SIGN
HERE

Leond J. Bacter
 Mailing Address (Number and street, Apt. No., P.O. Box, Rural Route)
 628 Harrison Av.

City and State

Rochester NY

ZIP Code

14609

Enter Name of County (if any) in which you now live

Monroe

Witnesses are required ONLY if this statement has been signed by mark (X) above. If signed by mark (X), two witnesses to the signing who know the individual must sign below, giving their full addresses.

1. Signature of Witness

2. Signature of Witness

Address (Number and street, City, State, and ZIP Code)

Address (Number and street, City, State, and ZIP Code)

A 132

1192
1192
122
LYNN R. CALLIN, M. D.
TELEPHONE: 546-6550

CHARLES C. HECK, M. D.
TELEPHONE: 546-8160

ORTHOPAEDIC SURGERY

220 ALEXANDER STREET ROCHESTER, NEW YORK 14607

WILLIAM M. BOGER, M. D.
TELEPHONE: 546-8140

D. SEWALL MILLER, JR., M. D.
TELEPHONE: 546-7880

JUL 20 1974

June 25, 1974

Mr. James L. Byrne
Employers Insurance of Wausau
P. O. Box 1045
Syracuse, New York 13201

Re: Lionel J. Bastien
628 Garson Avenue 14609
vs: R. T. French
Inj: 2/22/73
WCB: #7730 2530
Carrier Case: #6456114

Dear Mr. Byrne:

Mr. Bastien returns today having slow progression of his disease. He is now complaining of pain and spasm in the right side of his neck with radiation up to the base of his skull and headaches. His work about the house has become limited; he states he can only do chores for a short period of time, he clips part of his hedge, and then has to sit down to rest because of lameness and tiredness in his arms. His right arm is intermittently numb most of the time, at the present time. He states he has swelling after prolonged use and when he wakes up in the morning. He has strongly positive bilateral Adson's test.

I feel the patient does have advancing degenerative arthritis, and because of this associated with his obesity and what appears to be a bilateral thoracic outlet syndrome, he is for all intents and purposes totally disabled.

I do not feel he will be able to return to work even if a job is available, and I therefore feel he should qualify for Social Security Disability pension. However, as previously stated, I feel that his accident at work played only a small part in the prolonged and progressive illness that this patient has. It appeared to be a triggering event, probably rating about 25 percent of the total disability.

Sincerely yours,

D. Sewall Miller, Jr.
D. Sewall Miller, Jr., M. D.

DSM/amp

cc: WCB

SB 217550

SS: 004 32 1915

cc: Bureau of Disability Determinations

Exhibit - 18

A 133

edh 9/12

Nervous System
(8/73) CE-392

TO: Daniel S. Pettee, M.D. Claimant Lionel J. Bastien
A/N 079-16-5221 123

PLEASE ANSWER ALL RED CIRCLED ITEMS

1. Date(s) of your examination 9 Oct 74
2. What is the degree of residual motor weakness in the affected extremities on the basis of one to four plus with four plus representing total paralysis?
 - a. Lower extremity: Left ? 9 wks Right way in all 4 extrem
 - b. Upper extremity: Left Right
3. What is the degree of aphasia present on the basis of one to four plus with four plus representing total aphasia? none
4. a. Is there any speech disturbance? no b. Severity
5. a. Are there any personality changes? (i.e., headache, irritability, loss of ability to concentrate, insomnia, memory defects, etc.) no
b. Specify disorder and give severity
6. List residual sensory changes and give severity Repts ↓ perception of pain & touch distal to knees & shoulders
7. List residual motor changes and give severity no reflexes & muscle mass & tone - See #2
8. a. Is there any visual disturbance 0
b. State type and severity
9. Give frequency of diurnal grand mal attacks: 0
Daily ; Weekly ; Monthly ; Other
10. Give frequency of petit mal attacks: 0
Daily ; Weekly ; Monthly ; Other

Exhibit - 19

State of New York - Department of Social Services
Bureau of Disability Determinations
Two World Trade Center, New York, N.Y. 10047

(3 pages)

19
A 134

11. Give therapy used in treatment, if known:

<u>Therapy</u>	<u>Response</u>
ASAgX 846 & Valium 5 up bed	Some relief of pain
Cow traction bed	

12. If contractures present, give joints involved:

<u>Joint</u>	<u>Severity (Degree of Contracture)</u>
_____	_____
_____	_____
_____	_____

13. Check members affected by tremor and give severity on basis of one to four plus:

<u>Extremity</u>	<u>Severity</u>
a. Left upper _____	_____
b. Right upper _____	_____
c. Left lower _____	_____
d. Right lower _____	_____

14. State degree of rigidity on basis of one to four plus 0

15. a. Is festination present? no b. Severity _____

16. a. Is gait affected? _____ b. Type and Severity _____

17. Loss of weight? no Amount? _____ Present weight _____ Height _____

18. Give any other serious condition significant to recovery Obesity

19. Give your opinion whether this claimant is capable of managing benefit payments in his own interest.

Signed [Signature] M.D. Date 90 & 1974

For Bureau Use: Review Physician _____ M.D. Date _____

DR. DANIEL S. PETTEE
DR. MARVIN N. GOLDSTEIN
220 ALEXANDER STREET
ROCHESTER, NEW YORK 14607

125

NEUROLOGY
ELECTROMYOGRAPHY

October 11, 1974

BY APPOINTMENT
716-546-2140

New York State Bureau of Disability Determinations
Department of Social Services
Two World Trade Center
New York, New York 10047

Re: Bastien, Lionel J.
SS#: 079-16-5221

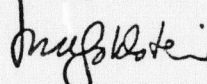
Dear Sirs:

I interviewed and examined Mr. Bastien on October 9, 1974. He tells me that he first became disabled in 1963 after injury in which he strained his neck. He was out of work off and on through that year, being treated by an orthopedist and a neurosurgeon. In 1970, when he continued having neck discomfort and right arm and shoulder weakness, a myelogram was performed in the Highland Hospital by Dr. Geib. The patient states that this was negative. He was treated with physical therapy. When his symptoms failed to clear, he was seen by Dr. Alexander Feldmann of who apparently diagnosed the presence of a right carpal tunnel syndrome after nerve conduction studies. This median nerve was decompressed by Dr. Roger Miller. The patient noted some relief of his discomfort and returned to work. In early 1973, while attempting to lift a heavy cabinet, he strained his back and neck again. Although a myelogram was negative, he has continued to have neck spasm and discomfort. At night his neck and right shoulder ache so much that he states he is unable to get to sleep. The patient states there is weakness of grip in his right hand, and that every movement is a torture.

The patient walks slowly and stiffly into the office. He holds his neck tilted to the right. There is, indeed, some crepitus and stiffness on passive motion of the neck. Cranial nerves and mental status examinations are unremarkable, as are muscle stretch reflexes. Muscle mass and tone is normal. On attempted examination of muscle strength, the patient appears to "give way". I cannot tell whether this is voluntary or due to pain. The patient describes total lack of perception of light touch, pinprick, and vibration distal to both shoulders, and both knees in a glove and stocking-like distribution. He, however, can identify numbers written on the skin of his hands.

Thus, there is some evidence of spinal arthritis. I am unable to clearly document the presence of weakness. The patient does appear to be in pain. He apparently is receiving cervical traction, aspirin, and Valium as treatment.

Sincerely yours,



Marvin N. Goldstein, M.D.

MNG:td

A 136

THE GENESEE HOSPITAL
An Affiliated Hospital
of
THE UNIVERSITY OF ROCHESTER
SCHOOL OF MEDICINE AND DENTISTRY
224 Alexander Street
Rochester, New York 14607

DEPARTMENT OF RADIOLOGY

GERALD E. HOLZWASSER, M.D. Radiologist
SD 1968 Board of Radiology
R. H. KUEHNHANN, M.D. Radiologist
ANTHONY J. LACROIX, M.D. Radiologist
GENESEE RADIOLOGICAL GROUP, P.C. 126
452013

BASTIEN, Lionel

Dr. Pettee
cc: NYS Bureau of Disability Determinations
cc: Barbara Tarzia, Bus. Office

10-9-74

CERVICAL SPINE: C7 is not fully seen on the lateral film due to superimposed soft tissues. There is straightening of the normal lordotic curve. Loss of height of the intervertebral disc space between C6 and 7 is present with anterior and posterior osteophytes at this level and also at C4-5 and C5-6 to a lesser extent. There is intervertebral foraminal encroachment on the right side at C6-7 and C5-6. On the left there is encroachment only at C6-7 and it is much less marked. There is also apparent involvement of the right Luschka joints at C6-7. The posterior elements are otherwise intact.

IMPRESSION: Discogenic disease of the cervical spine most marked at the C6-7 and also present at C4-5 and C5-6.

DORSAL SPINE: Mild osteophyte formation is present in the lower dorsal spine most noted at D9-10 and D11-12. The vertebral bodies are well preserved in height. The posterior elements are intact.

IMPRESSION: Mild dorsal spine degenerative change.

LUMBAR SPINE: Films include films of the coccyx. Decreased height of the L4-5 intervertebral disc space is present with small anterior osteophytes both at the cranial and caudal ends of C4. The vertebral bodies are well preserved in height and there is no spondylolisthesis. A very minimal scoliosis to the right is present most probably due to patient positioning. The sacrum and coccyx are intact. Residual myelographic contrast is noted superimposed over the sacrum. Vascular calcification is also present.

IMPRESSION: Decreased height L4-5 intervertebral disc space with mild osteophyte formation at this level and also at L3-4. Myelographic contrast material is present.

Genesee Radiological Group, P.C.

by
George W. Parker, M.D.
GWP/jab

Exhibit- 20
A 137

PROFESSIONAL QUALIFICATIONS

1. Physician's Name Miller David Sewell, Jr. 127
(Last) (First) (Middle)

2. Address 260 Crittenden Blvd.
Rochester, N.Y. 14620

3. Year of Birth (B): 1936

4. Medical Education (ME): State: Quebec

School: McGill University Faculty of Medicine

Year of Degree: 1967

5. Year of License (L): _____

5. American Specialty Boards (AB): National Boards - 1968

7. Medical Specialties: Orthopedic Surgery, Plastic Surgery

8. Type of Practice (TOP): Resident or Fellow - training program

9. National Scientific Medical Societies (SS): _____

10. Professorial Appointments (PA): State: _____

School: _____

Title & Current Status: _____

11. Other Information (e.g., Hospital Appointments): _____

12. Sources of Information:

American Medical Directory

Year:	Edition:	Page:
1969	25th	2876
		Ed.

Other Sources: _____

MA-525
 (3-71)

EXHIBIT NO. 21

A 138

PROFESSIONAL QUALIFICATIONS

1. Physician's Name GOLDSTEIN, Marvin Norman 128
(Last) (First) (Middle)
2. Address 20 Varinna Drive
Rochester, New York 14618
3. Year of Birth (B): 1940
4. Medical Education (ME): State: Maryland
 School: University of Maryland School of Medicine, Baltimore
 Year of Degree: 1964
5. Year of License (L): 1965
6. American Specialty Boards (AB): American Board of Psychiatry and Neurology
7. Medical Specialties: Neurology
8. Type of Practice (TOP): _____
9. National Scientific Medical Societies (SS): _____
10. Professorial Appointments (PA): State: _____
 School: _____
 Title & Current Status: _____
11. Other Information (e.g., Hospital Appointments): _____
12. Sources of Information: American Medical Directory
Year: 1973 Edition: 26th Page: 1227
- Other Sources: _____

LYNN R. CALLIN, M. D.
TELEPHONE: 548-8150
CHARLES C. HECK M.D.
TELEPHONE: 548-8160
D. SEWALL MILLER, JR., M. D.
TELEPHONE: 548-7800
WILLIAM A. DOLAN, M. D.
TELEPHONE: 548-8140

MONROE ORTHOPAEDIC ASSOCIATES, P.C. ¹²⁹
TWO TWENTY ALEXANDER STREET
ROCHESTER, NEW YORK 14607

November 26, 1974

Employers Insurance of Wausau
847 James Street
P. O. Box 1045
Syracuse, New York 13201

Re: Lionel J. Bastien
628 Garson Avenue 14609

vs: R. T. French

Inj: 2/22/73

WCB: #7730 2530

Carrier Case: #6456114

Dear Sirs:

Lionel returns today on 11/19/74, complaining of essentially the same problems. However, his neck and right arm problems appear to be getting worse. He now has more constant pain along the nerve roots especially down into the index finger.

On exam, he has about 50% of normal motion of the cervical spine, about 30% of normal motion at the lumbosacral and lumbar area. The patient has been unemployed for two years, and I do not feel that he is really employable.

He is having problems with the Bureau of Disability Determinations and obtaining Social Security. I am a little bit at loss to explain why they do not approve him as he obviously has severe progressive degenerative arthritis which is not responding to conservative therapy. The patient was tried on a new medication today, Motrin, 400 mgs. p.o. t.i.d. He was told to take this for approximately ten days, and if he shows improvement, he is to then continue on it. I plan to see him again in a few months' time in follow up. There is really very little I can do for this man other than symptomatic treatment. The possibility of doing an anterior disc excision and fusion has been considered; I have not mentioned this to the patient because I do not want to raise his hopes. But with his continued isolated nerve root symptoms, then perhaps this might be a solution to some of his problem.

Sincerely yours,

D. Sewall Miller, Jr.

D. Sewall Miller, Jr., M. D.
Dictated, but not read.

DSM/amp

cc: WCB
SB 217550
SS: 004 32 1915

A 140

EXHIBIT NO. 23

Employers Insurance of Wausau

130

NOTICE THAT PAYMENT OF COMPENSATION FOR DISABILITY HAS BEEN STOPPED OR MODIFIED

ANSWER ALL QUESTIONS FULLY

ALL COMMUNICATIONS SHOULD REFER TO THESE NUMBERS							
1. W.C.B. Case Number	2. Carrier Case Number	3. Carrier Code	4. Date of Injury				
77302530	D-64-56114	091	2-22-73				
Name		Address to which notices should be sent (Give Number and Street, City, State, and Zip Code)					
5. Injured Person	LIONEL J. BASTIAN	628 GARSON AVE., ROCHESTER, NY 14609					
Employer	THE R.T. FRENCH CO.	ONE MUSTARD ST., ROCHESTER, NY 14609					
7. Carrier	EMPLOYERS INSURANCE OF WAUSAU P.O. BOX 1045, 935 JAMES STREET SYRACUSE, NEW YORK 13201						
8. Date Disability Began	9. Average Weekly Wage on Which Tot. Disab. Rate Was Computed	10. Date First Payment Mailed	11. Date Most Recent Payment Mailed				
2-23-73	\$ 195.45	3-13-73	11-7-74				
12. SUMMARY OF COMPENSATION PAYMENTS FOR DISABILITY, EXCLUDING MEDICAL							
Type of Disability	T/P*	Period(s) of Payment		Less Days Worked	Number of Weeks	Weekly Rate	Amount
		From	To				
TOTAL	T	2-23-73	4-11-73		6 3/5	95.00	627.00
PARTIAL							
33	1/3%	4-11-73	5-7-73		3 3/5	43.43	156.35
33	1/3%	5-7-73	11-14-74		29 3/5	43.43	3457.03
		ATTY LIEN-\$200.00					
DISFIGUREMENT							
*Indicate: "T" for temporary disability "P" for permanent disability						TOTAL	4240.38
13. Has claimant returned to work? →		a. At regular wages? ☐ Yes ☒ No		Date of return ABLE 5-7-73		b. At reduced earnings? ☐ Yes ☐ No	
14. Has compensation for disability been paid in full? ☐ Yes ☒ No		c. If not paid in full, give reasons in space below why payments have been stopped or modified. Attach supporting medical reports if reason is degree or extent of related disability.					
COMPENSATION BENEFITS TO CONTINUE AT 33 1/3%.							
Dated 11-7-74		Signed By L. RANALLI			Title CLAIM CORRESPONDENT		

Prescribed by Chairman
Workmen's Compensation Board
of New York

8

(4-64) 1309-3114 7-64

SEE REVERSE SIDE

EXHIBIT NO. 24 (2 pages)
A 141

This notice must be sent to the CHAIRMAN, Workmen's Compensation Board, by the Insurance Company or Self-Insured Employer within 16 days after the date on which compensation payments are stopped or modified. A copy of this notice must also be sent to the CLAIMANT and to his REPRESENTATIVE, if any, simultaneously with notification to the Chairman.

TO THE CLAIMANT

1. This notice indicates that your employer (if self-insured), or his insurance company, has discontinued the payment of compensation to you or has modified the rate at which benefits are being paid, for the reasons shown.

2. The stoppage (or modification) of payments may be in accordance with a decision or award of a referee, or because you have returned to work, or because the employer or insurance company contends that your disability has terminated or that its degree has diminished, or for such other reasons as are shown.

3. The Workmen's Compensation Board will examine these reasons in order to determine what steps need be taken to protect your rights.

If the case has been closed by decision of a referee or the Board after a hearing, and all payments awarded have been made, no further action will generally be necessary unless an appeal has been taken from such decision.

If the case has not been closed, it will be scheduled for a hearing to decide if benefits have been paid fully, or whether additional benefits are due. Depending on the reasons for the stoppage or modification of payments, the hearing will be scheduled within the near future or delayed until a later date. For example, if payments have been stopped or modified because the extent or degree of your disability is in question, a hearing will be arranged as quickly as possible, so that your current right to further or increased payments may be determined promptly. On the other hand, if payments are stopped or modified because you have returned to your regular work at your usual wages, or for other reasons which clearly indicate no current right to additional benefits, the hearing may be deferred until, depending on the nature of your injury, a sufficient period has elapsed to permit the fullest possible recovery from its effects. The hearing which will then be scheduled will determine whether any permanent defects exist which may give rise to a right to further benefits.

4. Unless your case has been officially closed by decision of a referee at a hearing, or by the Board, this notice does not, by itself, affect your continued entitlement to such medical care as is necessary.

5. If you have any question concerning this notice or your rights under the Law or in connection with your case, you should consult the nearest office of the Board for advice. ALWAYS USE THE CASE NUMBERS SHOWN ON THE OTHER SIDE OF THIS NOTICE, or on other papers received by you, if you find it necessary to communicate with the Board or the carrier.

TO THE CARRIER

The filing of a Form C-8 is not authority to suspend or reduce payments in an open and pending claim unless supporting evidence that the suspension or modification is in order accompanies the notice, such as: (1) a copy of a payroll report if the compensation rate is not based on information contained in the Employer's Report of Injury and is below the maximum, and/or (2) medical or other reports (including notice of return to work) justifying the suspension or modification of payments, or by indicating on the Form C-8 the name and date of the medical or other reports, if they have been previously filed.

See Rule 22 of the Board's Rules and Procedures for other requirements controlling the right to suspend or modify payments.

THE CHAIRMAN, BOARD

CLERK

ST-5-11

Lionel J. Bastian, Cl
A/N 079-16-5221

Room 550 - 1 West Genesee Street
Buffalo, New York 14202
February 10, 1975

Director, Bureau of Disability Determinations
New York State Department of Social Services
Two World Trade Center
New York, New York 10047

Dear Sir:

Please secure the New York State Workmen's Compensation Board file
for:

NAME: Lionel J. Bastian, 628 Carson Ave., Rochester, N.Y. 14609

EMPLOYER: The R. T. French Co., One Mustard Street, Rochester, N.Y.

WORKMEN'S COMPENSATION CASE NO.: 77302530

Authorization for release of this information is enclosed.

Sincerely yours,

John J. Dumpert
Administrative Law Judge

enclosure

JJD:dfb

A 143

EXHIBIT NO. 25

133

Lionel J. Bastian, Cl
A/N 079-16-5221

Room 550 - 1 West Genesee Street
Buffalo, New York 14202
February 28, 1975

Director, Bureau of Disability Determinations
New York State Department of Social Services
Two World Trade Center
New York, New York 10047

Dear Sir:

On February 10, 1975 we requested the Workmen's Compensation Board file for the above claimant. To date we have not received this file.

We are enclosing a copy of our letter of February 10th for your information.

May we expect a reply from you in the near future?

Sincerely yours,

John J. Dumpert
Administrative Law Judge

JJD:dfb

enc.

A 144

EXHIBIT NO. 26

March 11, 1975

134

Room 550, 1 West Genesee Street
Buffalo, New York 14202

Director,
State of New York
Department of Social Services
Bureau of Disability Determinations
Two World Trade Center
New York, New York 10047

Dear Sir:

Re: Lionel J. Bastien
SS AN: 079-16-5221
WCB NO. 7730 2530

We are returning via Certified Mail, the Workmen's Compensation Board file relating to the above claimant.

Thank you for your cooperation in this matter and all Social Security matters.

Sincerely yours,

John J. Dumpert,
Administrative Law Judge

Enclosures

A 145

EXHIBIT NO. 27

C-2 (1-61)

WORKMEN'S COMPENSATION BOARD

EMPLOYER'S REPORT
OF INJURY

Send this notice directly to Chairman, Workmen's Compensation Board at address shown on reverse side within ten (10) days after accident occurs. Copy also should be sent to your insurance carrier.

WORK CASE NO.	CARRIER'S CASE NO.	INSURANCE NO.	DATE OF ACCIDENT
---------------	--------------------	---------------	------------------

(The spaces above are to be filled in by employer)

135

1. EMPLOYER	NAME The R. T. French Company	ADDRESS 1 Mustard St., Rochester, N. Y.
2. INSURANCE CARRIER	EMPLOYERS MUTUAL LIABILITY INSURANCE COMPANY OF WISCONSIN 840 JAMES STREET SYRACUSE, N. Y. 13201	EMPLOYEE'S S. N. ALICE NO. 079-16-5221
3. INJURED PERSON	(First Name) Lionel (Last Name) (Middle Name) (Suffix)	623 Garson Ave., Rochester, N. Y.

EMPLOYER	4. Nature of business: (State principal products manufactured or sold or services rendered) Mfr. Mustards, Spices and Grocers Sundries
ACCIDENT	5. Place where accident occurred: <u>Plant</u>
	6. Date of accident: <u>5/21/68</u> 19 <u>68</u> Day of Week <u>FRI</u> Hour of Day <u>A. M.</u> P. M.
	7. (a) Date disability began: <u>5/21/68</u> 19 <u>68</u> Hour of Day <u>10:30 A. M.</u> P. M. (b) Was injured paid in full for this day? <u>No</u> paid from <u>7:30 AM to 10:30 AM</u>
INJURED PERSON	8. Name of foreman: <u>Mr. E. Norton</u>
	9. When did you or foreman first know of injury? <u>6/1/68</u>
	10. Names and addresses of witnesses:
NATURE OF INJURY OR OCCUPATIONAL DISEASE	11. (a) Marital status: <u>M</u> (b) Sex: <u>M</u>
	12. Age: <u>47</u> 13. Did you have on file employment certificate or permit?
	14. Occupation: (a) Job title for which employed: <u>Foreman</u> (b) Occupation when injured: <u>Order Checker</u>
	15. (a) How long employed by you? <u>2/22/67</u> (b) Piece or time worker? <u>time</u> (c) Hours per day: <u>8</u> (d) Days per week: <u>5</u>
	16. Earnings in your employ: (a) Rate per: Hour \$ <u>3.265</u> Day \$ <u></u> Week \$ <u></u> Month \$ <u></u> (b) Total earnings paid during year prior to date of accident: (include bonuses paid, value of board lodging, etc.) \$ <u></u> Average per week: \$ <u></u> (c) Bonuses or premiums paid and included in item 16(b) above: \$ <u></u> (d) Estimated value of board, lodging, or other advantages in addition to wages: (included in item 16(b) above) \$ <u></u> (e) Calendar weeks in past 52 in same kind of work as at time of injury: <u>52</u>
	17. State nature of injury and part or parts of body affected: (as "Injury to Chest," etc.) <u>Injury to right shoulder, arm and upper back</u>
	18. Did you provide medical care? <u>Yes</u> If so, when? <u>6/1/68</u>
	19. Name and address of physician: <u>Dr. Herman Ligon, 593 Park Ave., Rochester, N. Y.</u>
	20. Name and address of hospital:
	21. Probable length of disability: <u>2</u>
FATAL CASES	22. (a) Has employee returned to work? <u>No</u> (b) If so, give date: (c) At what occupation? (d) At what weekly wage? \$ <u></u>
	NOTE: Form C-11 must be filed each time there is any change in the employment status as reported in item 22 above.
CAUSE OF ACCIDENT OR OCCUPATIONAL DISEASE	23. Has injured died? <u>No</u> (a) If so, give date of death: (b) Name and address of nearest relative:
	24. (a) What was employee doing when accident occurred? (Describe briefly as "loading truck," "operating press," "shoveling dirt," "painting with spray gun," "walking downstairs," etc.) <u>stocking pallets</u> (b) Where did accident occur? (Specify whether in street, factory yard, on loading platform, in factory, etc.) <u>factory</u>
	25. How was accident or occupational disease sustained? (Describe fully, stating whether injured person slipped, fell, was struck, etc., and what factors led up to or contributed to accident. Use additional sheets, if necessary.) <u>Employee fell after stocking pallets, rt. shoulder, arm and upper back began to ache</u>
	26. (a) What specific machine, tool, appliance, gas, liquid, or other substance or object was most closely connected with this accident or occupational disease? <u>pallets</u> (b) If mechanical apparatus or vehicle, what part of it? (State if gears, pulley, motor, etc.)
	27. Were mechanical guards or other safeguards (such as goggles) provided? (a) Were they in use at time of accident? (b) Was machine, tool, or object defective? If so, in what way?

Enter "X" in this box if accident was reported on Form C-21	Enter "X" in this box if accident was previously reported on Form C-25
---	--

FIRM NAME: <u>The R. T. French Company</u>	SIGNED BY: <u>M. J. MacLachlan</u>	Official Title: <u>Asst. Mgr.</u>
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DATE OF THIS REPORT: 5/21/68

C-2

C-2

C-2

C-2

C-2

EXHIBIT NO. 28
(2 files)

A 146

INSTRUCTIONS TO EMPLOYERS

135

Accident reports should be sent directly to the district offices at these addresses:

ALBANY 12202 - 1949 North Broadway. For all accidents in following counties: Albany, Clinton, Columbia, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Orange, Putnam, Rensselaer, Saratoga, Schoharie, Ulster, Warren, Washington.

BINGHAMTON 13902 - 221 Washington Street. For all accidents in following counties: Broome, Chemung, Chenango, Cortland, Delaware, Otsego, Schuyler, Steuben, Sullivan, Tioga, Tompkins.

BUFFALO 14203 - State Office Bldg., 125 Main St. For all accidents in following counties: Cattaraugus, Chautauqua, Erie, Niagara.

HEMPSTEAD 11550 - 175 Fulton Avenue. For all accidents in following counties: Nassau, Suffolk.

NEW YORK CITY 10007 - 50 Park Place. For all accidents in following counties: Bronx, Kings, New York, Queens, Richmond, Rockland, Westchester.

ROCHESTER 14614 - 155 Main Street West. For all accidents in following counties: Allegany, Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming, Yates.

SYRACUSE 13202 - State Office Bldg., East Washington St. For all accidents, in following counties: Cayuga, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence.

WORKMEN'S COMPENSATION LAW

Sec. 13 Treatment and care of injured employees.

"The employer shall promptly provide for an injured employee such medical, surgical or other attendance or treatment, nurse and hospital service, medicine, crutches and apparatus for such period as the nature of the injury or the process of recovery may require.****"

Sec. 51 Posting of notice regarding compensation.

"Every employer who has complied with section fifty of this chapter shall post and maintain in a conspicuous place or places in and about his place or places of business typewritten or printed notices in form prescribed by the chairman, stating the fact that he has complied with all the rules and regulations of the chairman and the board and that he has secured the payment of compensation to his employees and their dependents in accordance with the provisions of this chapter, but failure to post such notice as herein provided shall not in any way affect the exclusiveness of the remedy provided for by section eleven of this chapter.****"

Sec. 52 Effect of failure to secure compensation.

"Failure to secure the payment of compensation shall constitute a misdemeanor, punishable by a fine of not more than five hundred dollars or imprisonment for not more than one year, or both. Where the employer is a corporation, the president, secretary and treasurer thereof shall be liable for failure to secure the payment of compensation under this section.****"

Sec. 110 Record and report of injuries by employers.

"Every employer shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within ten days after the occurrence of an accident resulting in personal injury, which shall cause a loss of time from regular duties beyond the working day or shift on which the accident occurred, or which shall require medical treatment beyond ordinary first aid or more than two treatments by a physician or person rendering first aid, a report thereof shall be made in writing by the employer to the chairman of the workmen's compensation board upon blanks to be procured from the chairman for that purpose. Such report shall state the name and nature of the business of the employer, the location of his establishment or place of work, the name, address and occupation of the injured employee, the time, nature and cause of the injury and such other information as may be required by the chairman. An employer shall furnish a report of any other accident resulting in an injury received by an employee in the course of his employment or an occupational disease incurred by an employee in the course of his employment whenever directed by the chairman. With the approval of the chairman an employer may report upon a single report form, in such detail as may be required by the chairman, all injuries to his employees within any calendar month which have caused either no loss of time or in which the employees have returned to their regular employment at their regular wages after not more than three days if there is no evidence of further disability and there is no indication for further treatment. Every such employer shall submit to the chairman his application upon a form approved by the chairman, and shall set forth such information as shall be required as to the facilities maintained by him for the care and treatment of employees, shall set forth the manner of keeping records of all injuries, and shall agree promptly to submit full and complete information as to any such case that shall require further treatment or that may be requested by the chairman. An employer who refuses or neglects to make a report as required by this section shall be guilty of a misdemeanor, punishable by a fine of not more than five hundred dollars."

C-2 (1-61) Reverse Side

A 147

LORIE A. GULINO, M. D.
GEORGE TIRONE, M. D.
PHILIP G. CLARKE, M. D.

RADIOLOGY

1295 PORTLAND AVENUE
ROCHESTER, NEW YORK 14621

266-3242

June 11, 1968

Re: BASTIEN, Lionel J.

No. 38982

Employed by: R. T. French Company

Referred by: Lloyd H. Leve, M. D.

Dear Dr. Leve:

EXAMINATION: Cervical spine.

FINDINGS: The seven cervical vertebral bodies are normally aligned. Slight disc space narrowing is seen at C-5 C-6 and at C-6 C-7 and at each of these levels there is circumferential osteophyte formation of moderate degree. This hypertrophic change produces moderate encroachment upon the intervertebral foramina at C-6 C-7 on the left and at C-5 C-6 and C-6 C-7 on the right. This encroachment is most marked at C-6 C-7 on the right.

(There is no evidence of recent or old fracture or subluxation in the cervical region and no bone destructive changes or major anomalies are seen.)

IMPRESSION: Focal disc and hypertrophic degenerative changes are seen at C-5 C-6 and C-6 C-7. Substantial encroachment upon the intervertebral foramina is noted at both of these levels on the right and at the lower level on the left.

Thank you for allowing us to examine Mr. Bastien.

Yours truly,



Philip G. Clarke, M. D.
SD 213253

PGC:cz

A 148

EXHIBIT NO. 29

LLOYD H. LEVE, M. D.
1540 CLIFFORD AVENUE
ROCHESTER, N. Y. 14609
TELEPHONE: 544-3445

138

April 14, 1969

Workmen's Compensation Board
155 W. Main St.
Rochester, N. Y. 14614

768 05804

Re: Lionel J. Bastien, age 47
628 Garson Ave.
Emp: R. T. French Co.
Inj: 5/31/68

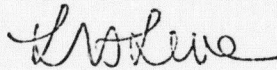
PROGRESS REPORT

Gentlemen:

This is a progress report. The patient has come to my office twice since my last report complaining that allegedly there is no light work for him at French's. He has allegedly been told to go back on compensation, since he still has discomfort in his right arm. I do feel that some restriction in lifting is in order for this gentleman, since he persists in having complaints relevant to his right arm. I do not feel that he should be on compensation at this point, nor do I feel that he should be out of work at this point. There has been no change in his complaints. Clinical findings remain essentially as before, namely, there is little objective finding to go along with his subjective complaints.

I have been in contact with both his employer and with the employer's insurance company. I have recommended that Mr. Bastien be evaluated by R. T. French's Medical Department physician relevant restrictions at work and also relevant to an imposition of further compensable disability. Personally I feel Mr. Bastien is employable and do not authorize any lost time from work.

Very truly yours,



Lloyd H. Leve, M.D.
SB 212600

LHL:bkt

A 149

EXHIBIT NO. 30
(10 pages)

LLOYD H. LEVE, M. D.

1540 CLIFFORD AVENUE
ROCHESTER, N. Y. 14609

TELEPHONE: 544-3445

March 24, 1969

139

Workmen's Compensation Board
155 W. Main St.
Rochester, N. Y. 14614

7680 5804

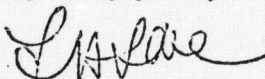
Re: Lionel J. Bastien, age 47
628 Garson Ave.
Emp: R. T. French Co.
Inj: 5/31/68

PROGRESS REPORT

Gentlemen:

This is a progress report on the above patient. He continues uninterruptedly at work. There has been no particular change in his over all condition relevant to the neck and right arm. As previously stated, I do not expect any particular change in the immediate future and will see the patient again in two months.

Very truly yours,



Lloyd H. Love, M.D.
SB 212600

LHL:bkf

A 150

LLOYD H. LEVE, M. D.
1540 CLIFFORD AVENUE
ROCHESTER, N. Y. 14609
TELEPHONE: 544-3445

140

February 4, 1969

Workmen's Compensation Board
155 W. Main St.
Rochester, N. Y. 14614

768 05804

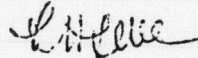
Re: Lionel J. Bastien, age 47
628 Carson Ave.
Emp: R. T. French Co.
Inj: 5/31/68

PROGRESS REPORT

Gentlemen:

This is a progress report on the above patient. He continues to have complaints relevant to his right hand, which have essentially remained unaltered since my last report. He allegedly has been discharged from Dr. Zinker's care, since Dr. Zinker feels that he cannot offer anything further on this particular case. I essentially feel the same way in that this gentleman has a problem which hopefully will work out with the passage of time. I have encouraged the patient to continue working without interruption and will see him again in approximately six weeks, though I do not anticipate any particular change in his overall status.

Very truly yours,



Lloyd H. Leve, M.D.
SB 212600

IHL:bkf

A 151

141

LLOYD H. LEVE, M. D.

1540 CLIFFORD AVENUE

ROCHESTER, N. Y. 14609

TELEPHONE: 544-3445

December 11, 1968

Workmen's Compensation Board
155 W. Main St.
Rochester, N. Y. 14614

76 80 5804

Re: Lionel J. Bastien, age 47
628 Carson Ave.

Emp: R. T. French

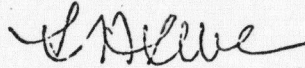
Inj: 5/31/68

PROGRESS REPORT

Gentlemen:

This is a progress report on the above patient. The patient noted that with recent shoveling of his driveway he had increased numbness in his right arm for a few hours and was required to take a few days off from work because of this. When I examined him on December 10, 1968, he noted that the numbness had resolved and was urged to return to work. He has noted that when he takes Valium he feels improved relevant to his right arm and this has been re-prescribed. I will be seeing the patient again in one month's time.

Very truly yours,



Lloyd H. Leve, M.D.
SB 212600

LHL:bkf

A 152
A 152

*not in
clo*

LLOYD H. LEVE, M. D.
1840 CLIFFORD AVENUE
ROCHESTER, N. Y. 14609

TELEPHONE: 544-3445

November 11, 1968

142

Workmen's Compensation Board
155 W. Main St.
Rochester, N. Y. 14614

76805804

Re: Lionel J. Easton, age 47
628 Carson Ave.
Emp: R. T. French Co.
Inj: 5/31/68

PROGRESS REPORT

Gentlemen:

This is a progress report on the above patient. He continues to have paresthesia in his right hand. He has been seen by Dr. Sinker and I refer you to the report by Dr. Sinker. The patient is able to continue working despite his problem with his hand. I will be seeing him again in one month. I do not anticipate any appreciable change in his symptomatology in the immediate future.

Very truly yours,

L. H. Leve

Lloyd H. Leve, M.D.
SB 212600

LHL:bkf

A 153

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conf
76805804

LLOYD H. LEVE, M. D.
1540 CLIFFORD AVENUE
ROCHESTER, N. Y. 14609

TELEPHONE: 544-3445
September 27, 1968

143

Workman's Compensation Board
155 W. Main St.
Rochester, N. Y. 14614

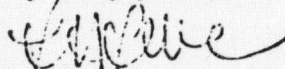
Re: Lionel J. Bastien, age 47
628 Carson Ave.
Emp: R. T. French Co.
Inj: 5/31/68

PROGRESS REPORT

Gentlemen:

This is a progress report on the above patient. He continues to have discomfort in his middle two fingers. He has also noted some numbness recently about the left scalp and forehead. I will consider referring the patient for a neurosurgical evaluation, if the complaints in his forehead and scalp persist. This will also help shed some light on the persistent pain which he has in his right arm. I will be seeing the patient again in two weeks to determine if the neurosurgical consultation is necessary.

Very truly yours,



Lloyd H. Love, M.D.
SB 212600

LHL:bkf

10-1
76805804
10-1

A 154

LLOYD H. LEVE, M. D.
1540 CLIFFORD AVENUE
ROCHESTER, N. Y. 14609
TELEPHONE: 544-3445
August 31, 1968

Workmen's Compensation Board
155 W. Main St.
Rochester, N. Y. 14614

Re: Lionel J. Bastien, age 47
628 Garson Ave.
Emp: R.T. French Co.
Inj: 5/31/68

PROGRESS REPORT

Gentlemen:

This is a progress report on the above patient, who has been working since July 29, 1968. He has continued to have radicular type pain in his right hand, but this is not increased since my last report. In the eventuality that his symptoms do change, he may benefit from traction treatments, which will be arranged as necessary. I will be seeing the patient again in approximately three weeks.

Very truly yours,

L. H. Love

Lloyd H. Love, M.D.
SB 212600

LHL:bkf

A 155

LLOYD H. LEVE, M. D.
1540 CLIFFORD AVENUE
ROCHESTER, N. Y. 14609
TELEPHONE: 544-3445
July 29, 1963

76805804 comp.

Workmen's Compensation Board
155 W. Main St.
Rochester, N. Y. 14614

Re: Lionel J. Bastien, age 47
628 Carson Ave.
Emp: R. T. French Co.
Inj: 5/31/63

PROGRESS REPORT

Gentlemen:

This is a progress report on the above patient. The cervical collar has been obtained. With this he has noted some relief of the discomfort in his neck. He continues to have some radicular discomfort in the right hand. I have advised the patient to attempt working as of July 29, 1963. He should not be allowed any heavy lifting. He will probably have continued complaints relevant to his neck and hand for quite some time. I will continue to see the patient at frequent intervals in the immediate future. ✓

Very truly yours,

L. Leve

Lloyd H. Leve, M.D.
SS 212600

LHL:bkf

A 156

7680 5804
GMP

LLOYD H. LEVE, M. D.
1540 CLIFFORD AVENUE
ROCHESTER, N. Y. 14609
—
TELEPHONE: 544-3445

146

July 5, 1968

Workmen's Compensation Board
155 W. Main St.
Rochester, N. Y. 14614

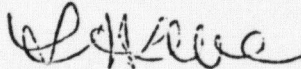
Re: Lionel J. Bastien, age 47
628 Garson Ave.
Emp: R.T. French Co.
Inj: 5/31/68

Gentlemen:

PROGRESS REPORT

This is a progress report on the above patient. He has been seen in my office on several occasions following my last report. He continues to complain of radicular type pain in his right index finger. He has considerable relief of pain in his neck and shoulder with heat treatments. He has been doing therapeutic exercises. I would be hopeful that he might be able to try light activities at work by July 8, 1968, provided he does not have to use his right arm for heavy lifting. I will be continuing to see this patient at frequent intervals. I hope for only some mild permanent disability as result of his injury.

Very truly yours,


Lloyd H. Leve, M.D.
SB 212600

LHL:bkf

A 157

LLOYD H. LEVE, M. D.
1540 CLIFFORD AVENUE
ROCHESTER, N. Y. 14609
TELEPHONE: 544-3445

147

June 17, 1968

76805804

Workmen's Compensation Board
155 W. Main St.
Rochester, N. Y. 14614

Re: Lionel J. Bastien, age 47
628 Garson Ave.
Emp: R. T. French Co.
Inj: 5/31/68

INITIAL REPORT

Gentlemen:

This is an initial report on the above patient, who was referred to my office for evaluation and care relevant to an injury to his neck, which he sustained while stacking pallets at work on May 31, 1968. The patient states that he subsequently had pain in his shoulders and was seen by a chiropractor, but because of persistent ache tilt of his head was referred to me for specialized care.

Past history is significant in that this patient experienced a similar difficulty in 1964, at which time he was out of work for three days.

Examination revealed tenderness in the posterior right shoulder. The patient tended to hold his neck to the right side. There was pain on the extremes of motion in the neck. There was a full range of motion in the arms without pain. A neurologic examination showed paresthesia of the right index finger with a superficial burn on the right middle finger, which the patient states he obtained because of some slight diminution of feeling in this finger.

X-rays of the cervical spine were obtained. This showed some evidence of degenerative arthritis. The patient was started on a program of heat, analgesics and was advised in the use of a towel collar for immobilizing his neck. He has been seen on two occasions and seems to be resolving his discomfort fairly satisfactorily. I would hope for gradual resolution with only some mild permanent disability as the result of an acute cervical strain with radicular involvement. I would hope this patient will be able to resume work within ten to fourteen days.

Very truly yours,



Lloyd H. Leve, M.D.
SB 212600

LHL:bkf

A 158

STATE OF NEW YORK
WORKMEN'S COMPENSATION BOARD

ATTENDING PHYSICIAN'S
SUPPLEMENTARY REPORT

148

Enter "X" to Show Type of Report: ☐ 15 DAY REPORT ☐ PROGRESS REPORT ☐ FINAL REPORT

WCB CASE NO. (if known)	CARRIER CASE NO. (if known)	DATE OF INJURY AND TIME	ADDRESS WHERE INJURY OCCURRED
(1)		5/21/68	R. T. French Company
INJURED PERSON	NAME Michael Bontion	AGE 48	ADDRESS 623 Carson Ave., Rochester, N.Y.
EMPLOYER	R. T. French Company		1 Mustard St., Rochester, N.Y. 14600
INSURANCE CARRIER	Employer's Mutual		10 Gibbs St., Rochester, N.Y. 14604

ANSWER ALL QUESTIONS. AVOID USE OF INDEFINITE TERMS SUCH AS "UPPER LIMB," "LIMB," ETC.

HISTORY

- Have you filed Form C-46, or other report, setting forth history? ☐ YES ☒ NO If "No," answer 1 (a) and (b) below.
- (a) State how injury occurred and give source of this information. (If claim is for occupational disease, include occupational history and date of onset of related symptoms). After stacking pellets, my right shoulder, arm, neck and upper back started to ache.
- (b) Was patient previously under the care of another physician for this injury? ☐ YES ☒ NO If "Yes," enter his name and address, and reason for transfer under "Remarks" (Item 10).
- Is there any history or evidence of pre-existing injury, disease or physical impairment? ☐ YES ☒ NO If "Yes," describe specifically.

DIAGNOSIS

- Present condition (include diagnosis, subjective complaints, objective findings, and any change of condition since last report. If patient was hospitalized since last report, so state and give name and address of hospital):
Ligamentous and muscular strain of cervical spine, right shoulder, and right back.

TREATMENT

- Nature of treatment: Patient is getting neck stretching and diathermy with Dr. Lloyd Levy.
Date of your first treatment: 6/4/68 Date of your most recent treatment: 6/16/68 Are you continuing treatment? ☒ YES ☐ NO
If treatment is continuing, estimate its probable duration.
If it has terminated, indicate reason. APPROX. 2 weeks

DISABILITY

- May the injury result in permanent restriction, total or partial loss of function of a part or member, or permanent facial, head or neck disfigurement? ☐ YES ☒ NO
- If "Yes," describe:
- On what date do you think patient was or will be able to:
(a) Resume limited work of any kind? Date: APPROX. 7/8/68 (b) Resume his regular work? Date: ☐ YES ☒ NO
- If patient is unable to do his regular work, but can do limited work, specify his work limitations due to this injury.
NONE

CAUSAL RELATION

- In your opinion, was the occurrence described above (or in your previous report which gave this information) the competent producing cause of the injury and disability (if any) sustained? ☒ YES ☐ NO
- Is rehabilitation treatment or services or evaluation therefor advised? ☐ YES ☒ NO Explain:

REHABILITATION

- If rehabilitation treatment or services or evaluation is advised, has referral been made? ☐ YES ☒ NO If "Yes," to whom?
If "No," indicate why.

REMARKS

- Enter here additional information of value, requests for authorization, etc:

Dated 6/26/68	Typed or Printed Name of Attending Physician Norman Elson, M.D.	Address 575 Park Avenue, Rochester, N.Y. 14607
WCB Rating Code 10	WCB Authorization No. 10-5-51	Telephone No. 721-5770
		Written Signature of Attending Physician // 8

ANSWER ALL QUESTIONS. AVOID USE OF INDEFINITE TERMS.

C-4 (Rev. 6-64)

See Reverse Side

EXHIBIT NO. 31

A 159

**IMPORTANT
TO THE ATTENDING PHYSICIAN**

149

1. Reports on this form (or on Form C-5 if filed by an ophthalmologist) must be filed within 15 days after you first render treatment in a workmen's compensation case or a volunteer fireman's benefit case, and thereafter as progress reports at intervals of 22 days or less during continuing treatment.

Please ask your patient for his Workmen's Compensation Board Case Number and the Insurance Carrier's Case Number, if they are known to him, and show these numbers on your reports, in the spaces provided.

File the signed original of this report directly with (1) CHAIRMAN, WORKMEN'S COMPENSATION BOARD of the office of the district in which the accident occurred and file a signed copy with (2) the INSURANCE CARRIER, if known, or the EMPLOYER.

2. The Law provides that no claim for medical or surgical treatment shall be valid and enforceable unless the physician furnishes the employer (or insurance carrier) and the Chairman with a preliminary notice (C-40) of injury and treatment within 48 hours following first treatment, and within 15 days thereafter a more complete report (C-4 or C-5), and subsequent thereto progress reports (C-4 or C-5) at intervals of 22 days or less, with a final report (C-4 or C-5) upon termination of treatment.
3. This form must be signed personally by the attending physician and must contain his authorization certificate number and code letters. If the patient is hospitalized, it may be signed by a licensed physician to whom the treatment of the case has been assigned as a member of the attending staff of the hospital.
4. **CHANGE OF ATTENDING PHYSICIAN:** The rules of the Chairman provide that "a physician authorized to treat workmen's compensation cases, when requested to supersede another physician, must, before beginning treatment of such patient, make reasonable effort to communicate with the attending physician to ascertain the patient's condition. The superseding physician must also advise the attending physician of the name of the person who has requested him to assume care of the case and state the reason therefor. If the second physician cannot contact the attending physician, and the claimant's condition requires immediate treatment, the said physician should advise the doctor previously in attendance within 48 hours that he now has the patient in his care. The preceding physician shall supply the succeeding physician with a complete history of the case".
5. **AUTHORIZATION FOR CONTINUED MEDICAL CARE:** When it is necessary to engage the services of a specialist, consultant, or surgeon, or to provide for physiotherapeutic procedures or x-ray examination costing more than \$25, or special diagnostic laboratory tests costing more than \$10, the physician must secure authorization from the employer, the insurance company, or the Chairman. Such authorization may be requested on this form under item 10. If authorization is not forthcoming or is not denied within five working days, or if a denial of authorization is not justified medically or otherwise, the special services required for the patient's welfare should be proceeded with on the ground that authorization has been unreasonably withheld. Such authorization is not required in an emergency under the provisions of Section 13-a (5).

In cases in which the claimant's physician prescribes a surgical appliance or dental treatment or denture, the physician should notify the employer or carrier of the need for such appliance or dental aid, and direct the claimant to the employer or carrier for the purpose of securing authorization for the purchase of such appliance or dental aid before the same is furnished to the claimant by the appliance dealer or dentist.
6. **PENALTY FOR FALSE REPRESENTATION:** If for the purpose of obtaining any benefit or payment under the provisions of the Workmen's Compensation or Volunteer Firemen's Benefit Laws, or for the purpose of influencing any determinations regarding any benefit or payment under the provisions of these laws, either for himself or any other person, any person willfully makes a false statement or representation, he shall be guilty of a misdemeanor.

WORKMEN'S COMPENSATION BOARD DISTRICT OFFICES

ALBANY 12001 - 1949 North Broadway. For all accidents in following counties: Albany, Clinton, Columbia, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Orange, Putnam, Rensselaer, Saratoga, Schoenectady, Schenectady, Ulster, Warren, Washington.

BINGHAMTON 13901 - 221 Washington Street. For all accidents in following counties: Broome, Chemung, Chenango, Cortland, Delaware, Otsego, Schuyler, Steuben, Sullivan, Tioga, Tompkins.

BUFFALO 14200 - State Office Building, 125 Main Street. For all accidents in following counties: Chautauque, Erie, Niagara.

NEW YORK CITY 10007 - 50 Park Place. For all accidents in following counties: Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, Westchester.

ROCHESTER 14614 - 155 Main Street West. For all accidents in following counties: Allegany, Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming, Yates.

SYRACUSE 13202 - State Office Building, East Washington Street. For all accidents in following counties: Cayuga, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence.

C-4 Reverse (5-64)

A 160

LEONARD L. ZINKER, M. D.
277 ALEXANDER STREET
ROCHESTER, NEW YORK 14607

150

NEUROLOGICAL SURGERY

December 17, 1968

Workmen's Compensation Board
155 West Main Street
Rochester, New York 14614

7680 5804

Re: Lionel Bastien
Inj.: 6/21/68
Emp: R. T. French

Gentlemen:

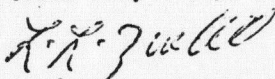
Lionel Bastien was re-examined in the office today.

He complained of some stiffness in the lateral aspect of the right forearm last Sunday, 12/1/68, after shoveling snow, lasting 4 hours.

There were no abnormal findings today, and no serious aftereffects are expected.

He was discharged today.

Yours very truly,



Leonard L. Zinker, M.D.

LLZ/jhm

cc: Lloyd H. Leve, M.D.
Emp. Mut. of Wausau

A 161

EXHIBIT NO. 32
(3 Pgs)

LEONARD L. ZINKER, M. D.
277 ALEXANDER STREET
ROCHESTER, NEW YORK 14607

NEUROLOGICAL SURGERY

151

November 26, 1968

7680 5804

Workmen's Compensation Board
155 West Main Street
Rochester, New York 14614

Re: Lionel Bastien
Inj: 6/21/68
Emp: R. T. French

Gentlemen:

Lionel Bastien was re-examined in the office today.

He complained of an aching pain in the posterior aspect of the Mid-right arm and index and lateral half of the right middle finger.

On examination, he still had a Tinel sign over the lateral aspect of the right distal forearm.

He also complained of burning pain over the left forehead when he washes.

He will be re-examined in one month.

Yours very truly,

L. L. Zinker
Leonard L. Zinker, M. D.

LLZ/rsm

cc: Emp Mut of Wausau
J. Loyd H. Leve, M. D.

A 162

TO: WCB, Emp Mut of Wausau, Lloyd H. Leve, M. D.

152

FROM: Leonard L. Zinker, M. D.

RE: Lionel Bastien - neurosurgical consultation - 10/29/68

INJ: 6/21/68

EMP: R. T. French

7680 5804
Comfall

CHIEF COMPLAINTS: Prickly feeling (pointing to the right index and middle fingers)

PRESENT ILLNESS: This 47-yr old, white, right-handed male strained himself at work on about 6/21/68 at 6:00 p.m. The next morning on arising he noted pain in his right scapula. He was examined by the plant nurse and then by Dr. Elson. After that he went to see a chiropractor and received 4 treatments. About a wk after this episode he noted prickling pain in the lateral aspect of his right index and middle finger. This has persisted but the pain in his scapula cleared up about a month ago. He was out of work for 7 wks. He has never had a similar episode in the past.

P.H. Born in Montreal, Can. 11/5/20. H: 6. 9 yrs. Marital history: 17 yrs, 1 child. Present Job: 17 yrs. Tobacco: about a pack of cigarettes a day.

PHYSICAL EXAMINATION: Height 5'7"; weight 195 lbs. (2 yr ago 224 lbs.); General: This found a somewhat obese white male in no apparent distress with no abnormal sounds about the neck. Radial pulses were not influenced by neck position. There was no evidence of weakness or atrophy in the hands nor any loss of grip. At a point $7\frac{1}{2}$ cm. proximal to the major phlebot crease of the right hand he had a Tinel response radiating into the index finger. He also had an area of light touch loss over the index finger, lateral aspect of the middle finger and dorsal meta-carpal web #1 of the right hand.

DIAGNOSIS: He apparently stretched the right brachial plexus in the injury at work on 6/23/68.

RECOMMENDATIONS: Yeast cakes. Re-examine in 1 month.

DISABILITY AND PROGNOSIS: He is expected to fully recover within the next few months. LLL/SBQ (cc: WCB, Emp Mut of Wausau, Dr. Lloyd Leve)

L. Zinker
Leonard L. Zinker, M. D.

BEST COPY Obtainable

A 163

LD
FRED W. GEIB, M. D.
1100 PARK AVENUE
ROCHESTER, NEW YORK 14610
271-6977

SM-9 9827)

153

July 14, 1970

Employers Mutual Insurance Company
847 James Street
P.O. Box 1045
Syracuse, New York 13201

Re: BASTIEN, Lionel J.
vs: R. T. French Company
Inj: May 21, 1968
D64-36461

768 05704

Gentlemen:

I saw Mr. Bastien in our office on the 8th of July 1970.

A diagnosis of a median carpal tunnel syndrome has been made however, no conductivity tests of the median nerve have been made.

I have gone over him today. I do not find any atrophy to the thenar eminence. Patient has some numbness involving the thumb and index finger. The middle and ring fingers are not involved. The Tinel sign is not present and the Phelin's sign is not present. He said that it bothers him a little bit along the radial side of the right forearm from the wrist upward toward the elbow when the skin is lightly touched.

I am not completely sold on the fact that he has a median carpal tunnel syndrome. I understand that they are going to do the electrical tests now and see what the conductivity is. Until that is done, I would be a little skeptical of what the end result might be from operation for this syndrome.

Very truly yours,

Fred W. Geib
FRED W. GEIB, M. D.

FWG
c:wcc
kr

A 164

EXHIBIT NO. 33
(S. Hines)

(SM-9 9827)

FRED W. GEIB, M. D.
1100 PARK AVENUE
ROCHESTER, NEW YORK 14610

271-6977

154

March 20, 1970

Employers Mutual Insurance Company
847 James Street
P.O. Box 1045
Syracuse, New York 13201

7680 5804
Re: BASTIAN, Lionel J. (BASTIEN)
vs: R. T. French Company
Inj: May 21, 1968
D64-36461

Gentlemen:

I saw Mr. Bastian in our office on the 16th of March 1970.

The patient still complains about his right hand with numbness in the index and middle fingers. He is working full time. Dr. Brancato in his report of the 6th of February 1970 definitely states that the symptomatology of which this man complains was treated by him on the 6th of January 1964, on the 7th of July 1965 and on September 6, 1968.

On examination today, the patient has gained at least 10 or 15 pounds in weight which is reflected in the arm measurements.

His general neurological examination is negative.

ARMS: The arm motions around the shoulders are normal. Strength is good. His hands are coarse and show evidence of having been used. The arm measurements show that he has gained weight but the proportions are the same as when I examined him a year ago. Blood pressure is equal in both arms. There is no change in the vascular structures. The pulses are equal, regular and synchronous.

Measurements - 3/16/70:	Right	Left
5" above olecranon	13 1/2	13
3" below "	11	10 1/2
Hand	8 5/8	8 1/4
Blood pressure	128/80	132/90

A 165

BASTIAN, Lionel J. - continued:

3/20/70

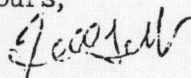
There is no tenderness over the great nerves of the right arm. Patient has no evidence of a median carpal tunnel syndrome of the right wrist. There are no reflex changes. The patient complains subjectively of some numbness of the index and middle fingers which is very difficult to evaluate. There are certainly no motor changes.

IMPRESSION: It seems as though this man's symptoms have been the same for the last few years.

When I checked over the history and the findings of the first examination, the findings were negative. The history was the same as Dr. Brancato said was given to him when he examined him on a number of occasions since 1964.

The symptomatology is identical, call it what you may. It is not a real neuritis such as we think of such a term medically. Whatever did occur, certainly at the present time there is no evidence of any residual changes, he has no working disability and I would say that his condition is no different now than it was previous to the time he was complaining of difficulty in May 1968.

Very truly yours,



FRED W. GEIB, M. D.

FWG
Enc
c:wcc
kr

A 166

(SM-9 9827)

FRED W. GEIB, M. D.
1100 PARK AVENUE
ROCHESTER, NEW YORK, 14610

155

271-6977

August 4, 1969

76865804
Employers Mutual Insurance Company
847 James Street
P.O. Box 1045
Syracuse, New York 13201

Re: BASTIAN, Lionel J. (BASTIEN)
vs: R. T. French Company
Inj: May 21, 1968
D64-36461

Gentlemen:

I saw the patient in our office on the 29th of July 1969.

He still has this complaint about his ^{right} ~~left~~ hand. His neurological is completely normal. Neck motions are normal.

At the present time the patient is without findings and he is working full time without disability.

Very truly yours,

FRED W. GEIB, M. D.

FWG
c:wcc
kr

A 167

FRED W. GEIB, M. D.
1100 PARK AVENUE
ROCHESTER, NEW YORK 14610

271-6977

June 6, 1969

Employers Mutual Insurance Company
847 James Street
P.O. Box 1045
Syracuse, New York 13201

76805804

Re: BASTIAN, Lionel J. (BASTIEN)
vs: R. T. French Company
Inj: May 21, 1968
D64-36461

Gentlemen:

I saw the patient in our office on the 2nd of June 1969.

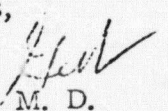
He has had four neck stretching treatments which did not help him at all. His examination today is negative, except for the subjective symptoms.

This is a completely negative examination.

Spinal fluid studies showed a total protein of 50 which is normal, and a white blood count which was negative.

IMPRESSION: I told the patient that I did not think he needed any further medical treatment, observation or care. He is working. I do not think there is anything we can come up with so far as any tangible means of diagnosis to corroborate his subjective symptoms.

Very truly yours,


FRED W. GEIB, M. D.

FWG
c:wcc
kr

A 168

FRED W. GEIB, M. D.
1100 PARK AVENUE
ROCHESTER, NEW YORK 14610

158

271-6977

May 20, 1969

Employers Mutual Insurance Company
847 James Street
P. O. Box 1045
Syracuse, New York 13201

76805804

Re: BASTIAN, Lionel J.
vs: R. T. French Company
Inj: May 21, 1968
D64-36461

Gentlemen:

On the 5th of May 1969 the patient was admitted to the Highland Hospital. On the 6th of May I did a cervical Myelogram study on him and it was completely normal.

The patient was discharged from the hospital on the 7th of May. He had no reaction to the test.

This was a completely negative examination. I certainly thought that this man would have something with the findings but apparently there is nothing within the canal.

I think it might be well to give him neck stretching and have him wear a neck stretching apparatus to bed at night with about 3 pounds pressure and we will see what happens.

Very truly yours,

FRED W. GEIB, M. D.

FWG
c:wcc
kr

A 169

FRED W. GEIB, M. D.
1100 PARK AVENUE
ROCHESTER, NEW YORK 14610

271-6977

May 2, 1969

Employers Mutual Insurance Company
847 James Street
P.O. Box 1045
Syracuse, New York 13201

768 05504

Re: BASTIAN, J. (48)
vs: R. T. French Company
Inj: May 21,
D64-36401

Gentlemen:

I saw the patient in our office on the 28th of April 1969.

On the 21st of May 1968 while working at the R. T. French Company, he was helping a driver pack some pallets which were empty at this time. These are pallets on which they pile merchandise. He said that when they finished piling these, he was all bent over to the left side. His neck was pulled over. After that he had a lot of discomfort. He saw Dr. Elson who checked him over and gave him some treatments and medication. He said that later Dr. Elson referred him to Dr. Lloyd Leve who checked him over orthopedically. Several months later Dr. Gulino x-rayed his low back and neck. He was off work about 8 weeks. He said that after Dr. Leve saw the x-rays, he gave him heat treatments and then sent him back to work. He said that he wore a collar for a month after he returned to work. He has pain down his right arm that ends up in the index and middle fingers and it bisects the middle finger. Dr. Leve told him he had a pinched nerve.

Dr. Leve sent him to Dr. Zinker and he gave him tablets to take twice a day and that about finished it. He said that Dr. Zinker saw him twice and told him it would work out and this was all.

EXAMINATION: The patient is a powerfully built man of 48 whose blood pressure is equal in both arms.

GENERAL NEUROLOGICAL EXAMINATION: Negative.

ARMS: The arm measurements are normal for a right handed man. There is numbness on the back of the right thumb, index and the radial side of the middle finger. The triceps reflex is not good at all but it is difficult to tell. The biceps are equal.

A 170

2.

BASTIAN, Lionel J. - continued:

When you put his right ear toward the right shoulder, he gets pain streaking down his arm and it tingles in the fingers as described. Turning or twisting the neck does not do it at all.

IMPRESSION: I think this man has nerve root pressure probably at the 6th cervical space on the right side. I suggest that a cervical Myelogram study be carried out for diagnostic purposes.

Very truly yours,

FRED W. GEIB, M. D.

FWG
c:wcc
kr

Arm measurements:
5" above olecranon
3" below "
Hand

Right	Left
12 1/2	12
11	10 1/2
8 5/8	8 3/8

Blood pressure:

124/86

126/90

Geib

A 171

W. COLGAN, MD
SD 2013
SD 201761

ROCHESTER, N. Y. 14618
DEPARTMENT OF DIAGNOSTIC RADIOLOGY REPORT
REGISTRATION #3008 R

F. M. KELLEY, MD
F. S. EDDMAN, MD
SD 2013
SD 201761

161

CERVICAL MYELOGRAM: Pantopaque in the cervical area from the level of C1 down through D2 shows no evidence of significant filling defect.

Conclusions: No evidence of a cervical disc.

T. B. Steinhausen, M.D.
mt

TBS
L. Baxter vs RT. Trunch
76805804

A. Gordon Ide, M. D.
Radiologist
S.D. 20137 issued 1943
Registration #3008 R

IT IS UNDERSTOOD THAT THE FILMS ARE THE PROPERTY OF THIS DEPARTMENT. FILMS WILL NOT BE
SHOWN OR FINDINGS GIVEN, WITHOUT THE KNOWLEDGE AND CONSENT OF THE PATIENT, OR THE
PHYSICIAN IN ATTENDANCE ON THE CASE.

RADIOLOGIST

M.D.

HIGHLAND HOSPITAL
DEPARTMENT OF DIAGNOSTIC RADIOLOGY

5 C 68

B-2 302-1

213 537 43 M P
GMB F 3043
BASTIEN 1106L

☐ WHEEL CHAIR
☒ STRETCHER

REQUESTED BY

H. A. I.

REFERRING PHYSICIAN
& LAB FINDINGS

MC

SMA

B/C B/S

DATE

AGE

5/6/69

INSURANCE, COMPENSATION, LIABILITY, OR OTHER INFORMATION

☒ IN PATIENT
☐ CLINIC
☐ PRIVATE
☐ EMERGENCY
☐ EMPLOYEE
☐ STUDENT HEALTH

X-RAY NUMBER

82874

DPS. A. G. IDE • T. B. STEINHAUSEN • R. J. CALIHAN • J. W. COLGAN
C. E. SHERWOOD • F. M. KELLEY • F. S. EDDMAN

CHARGE

EXHIBIT NO. 34

A 172

State of New York

WORKMEN'S COMPENSATION BOARD

REPORT OF MEDICAL EXAMINATION

162

W. C. B. CASE No. 76805804

CLAIMANT Lionel Bastien

EMPLOYER R. T. French Co

STATE OF NEW YORK }
Monroe County } SS Dr. Della Porta

being duly sworn deposes and says that he is a Physician, duly licensed in the State of New York; that he is a Compensation Examining (Physician), (Ophthalmologist) of the New York State Workmen's Compensation Board; that he has this day examined the claimant named above and makes the following report and findings therefrom:

History, complaints and findings on examination are the same as reported 5/24/71.

Defects are permanent and equal to schedule loss of use of 10% of the right hand.

2 4 4
1 4 4 0

Subscribed and sworn to before me

this 11th day of Nov. 1971

[Signature]
(Signature of [Physician] [Ophthalmologist])

Authorized Under Sec. 142, Subd. 3,
of the Workmen's Compensation Law.

This report was dictated under oath in the minutes of _____
(Date)

A 173

C-71



C-71

C-71

C-71

C-71

EXHIBIT NO. 35 (SP1)

WORKMEN'S COMPENSATION BOARD

REPORT OF MEDICAL EXAMINATION

163

W. C. B. CASE No. 76805804

CLAIMANT Lionel BastienEMPLOYER R T French CoSTATE OF NEW YORK } Dr Della Porta
Monroe County } SS

being duly sworn deposes and says that he is a Physician, duly licensed in the State of New York; that he is a Compensation Examining (Physician), (Ophthalmologist) of the New York State Workmen's Compensation Board; that he has this day examined the claimant named above and makes the following report and findings therefrom:

History is the same as reported 12/17/70.

At the present time he complains of pain in right index finger and of numbness in right hand with stiffness.

Examination reveals no muscle spasm, tenderness or deformity in region of cervical spine. There is no restriction to motion of cervical spine or shoulders. No atrophy noted in either arm. Deep tendon reflexes are equal and active.

There is a mild degree of swelling of entire right hand and claimant states he is taking Prednisone. The scar over the volar aspect of wrist is well healed.

Claimant has a minimal partial disability. Reexamination in 9 mos.

Subscribed and sworn to before me
this 17th day of Feb. 19 71 } rs

(Signature of [Physician] [Ophthalmologist];)

Authorized Under Sec. 142, Subd. 3,
of the Workmen's Compensation Law.

This report was dictated under oath in the minutes of _____
(Date)

C-71

C-71

C-71

C-71

C-



A 174

WORKMEN'S COMPENSATION BOARD

REPORT OF MEDICAL EXAMINATION

164

W. C. B. CASE No. 76805804CLAIMANT Lionel BastienEMPLOYER R. T. French Co.STATE OF NEW YORK }
Monroe County } SS Dr. Della Porta

being duly sworn deposes and says that he is a Physician, duly licensed in the State of New York; that he is a Compensation Examining (Physician), (Ophthalmologist) of the New York State Workmen's Compensation Board; that he has this day examined the claimant named above and makes the following report and findings therefrom:

Claimant sustained a strain of the cervical spine in 5/69. He had a cervical myelogram which was negative. About two months ago, claimant underwent surgery for a carpal tunnel syndrome of right wrist.

At the present time claimant still complains of pain radiating from the neck to the shoulder to the hand.

Examination reveals no muscle spasm, tenderness or deformity of upper back. Claimant has a good range of motion of cervical spine in both shoulders. No atrophy is noted in either arm. Deep tendon reflexes are equal and active bilaterally. There is a well healed scar over the volar aspect of wrist. There is a mild degree of swelling of right hand.

Claimant has a minimal partial disability.

Subscribed and sworn to before me
this 17th day of Dec. 19 70 } rs

(Signature of [Physician] [Ophthalmologist])

Authorized Under Sec. 142, Subd. 3,
of the Workmen's Compensation Law.

This report was dictated under oath in the minutes of _____
(Date)

C-71

C-71

C-71

C-71

C-71



A 175

State of New York

WORKMEN'S COMPENSATION BOARD
REPORT OF MEDICAL EXAMINATION

165

W. C. B. CASE No. 76805804

CLAIMANT Lionel Bastien

EMPLOYER R T French Co

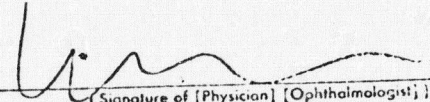
STATE OF NEW YORK } Dr. Della Porta
COUNTY } SS

being duly sworn deposes and says that he is a Physician, duly licensed in the State of New York; that he is a Compensation Examining (Physician), (Ophthalmologist) of the New York State Workmen's Compensation Board; that he has this day examined the claimant named above and makes the following report and findings therefrom:

History, complaints, findings and conclusions are the same as reported 6/24/69.

Subscribed and sworn to before me

this 7th day of January 19 70


(Signature of [Physician] [Ophthalmologist])

Authorized Under Sec. 14, Subd. 3,
of the Workmen's Compensation Law.

This report was dictated under oath in the minutes of (Date)

C-71



C-71

C-71

C-71

A

176

WORKMEN'S COMPENSATION BOARD

165

REPORT OF MEDICAL EXAMINATION

76805804

W. C. B. CASE No. _____

Lionel Bastien

CLAIMANT _____

R T French Co

EMPLOYER _____

STATE OF NEW YORK }
Monroe County } SS

Dr Della Porta

_____ being duly sworn deposes and says that he is a Physician, duly licensed in the State of New York, that he is a Compensation Examining (Physician), (Ophthalmologist) of the New York State Workmen's Compensation Board; that he has this day examined the claimant named above and makes the following report and findings therefrom:

Claimant sustained a strain of the cervical spine in 5/69. He had a cervical myelogram which was negative. At the present time he complains of both an aching sensation and a feeling of numbness in the ^{right} index finger and on the radial half of the ^{left} middle finger.

Claimant also complains of occasional pain over the right cervical area.

Examination reveals no muscle spasm, tenderness or deformity of the upper back. Claimant has a good range of motion of the cervical spine in both shoulders. No atrophy noted in either arm. Deep tendon reflexes are equal and active at the biceps and somewhat sluggish in the triceps.

Claimant has a minimal partial disability.

Subscribed and sworn to before me
this 24th day of June 19 69 }

(Signature of [Physician] [Ophthalmologist])

Authorized Under Sec. 142, Subd. 3,
of the Workmen's Compensation Law.

This report was dictated under oath in the minutes of _____
(Date)

C-71

C-71

C-71

C-71

C-71



A 177

CHARLES I. MAGGIO, M. D.
JOSEPH C. MAGGIO, M. D.
140 BROAD STREET WEST
ROCHESTER, NEW YORK 14614

167

November 15, 1971

Employers Mutual Insurance Company
847 James Street
Syracuse, New York

Re: Lionel Bastien
Vs: R. T. French
Inj: 5/31/68
File: 288 8216
WCB: 7680 5804
Subsequent

Gentlemen:

On 11/11/71 I examined the above named claimant at the Compensation Board independent of the state medical examiner.

PRESENT COMPLAINTS: "I still have the numbness in the index and middle fingers."

EXAMINATION: Upper extremities: Right: Wrist: There is a well healed scar over the flexor aspect of the wrist which extends into the palm of the hand. There is mild loss of dorsal flexion, other motion is normal.

Left: Function of all joints is normal.

CONCLUSION: This claimant has about 10% permanent loss of use of the right hand, it appears that maximum improvement has been reached.

Very truly yours,

Joseph C. Maggio, M.D.
Joseph C. Maggio, M.D.

JCM/jm

Orig. sent to WCB

A 178

EXHIBIT NO. 36
(J. Mag.)

CHARLES I. MAGGIO, M. D.
JOSEPH C. MAGGIO, M. D.
140 BROAD STREET WEST
ROCHESTER, NEW YORK 14614

168

May 24, 1971

Employers Mutual Insurance Company
847 James Street
Syracuse, New York

Re: Lionel Bastien
Vs: R. T. French
Inj: 5/31/68
File: 288 8216
WCB: 7680 5804
Subsequent

Gentlemen:

On 5/24/71 I examined the above named claimant at the Compensation Board independent of the state medical examiner.

PRESENT COMPLAINTS: "This finger swells once in a while."

EXAMINATION: There is a full range of neck motion without complaints.

Upper extremities: Right: Function of the shoulder and elbow is normal. Wrist: There is a well healed scar over the flexor aspect of the wrist with mild loss of dorsal flexion, other motion of the wrist is normal.. He has a small swelling over the dorsum of the hand that preceded this accident.

Left: Function of all joints is normal.

CONCLUSION: The condition of the right wrist is too early for final adjustment.

Very truly yours,

Joseph C. Maggio M.D.
Joseph C. Maggio, M.D.

JCM/jm

Orig. sent to WCB

A 179

CHARLES I. MAGGIO, M. D.
JOSEPH C. MAGGIO, M. D.
140 BROAD STREET WEST
ROCHESTER, NEW YORK 14614

169

April 22, 1971

Employers Mutual Insurance Company
847 James Street
Syracuse, New York

76805804

Gentlemen:

re: Lionel Bastien
vs: R.T. French Co.
inj: 5-31-68
File: 288-8216

On 4-14-71 the above-named fifty year old married male was re-examined by me at my office, as requested.
He was previously seen on 12-17-70 and 2-17-71.
He is a bulk checker.

PAST HISTORY: The person had a ganglionectomy in his left wrist in 1940.
There is also a questionable history of an ulcer.

HISTORY OF ACCIDENT: Mr. Bastien told me on 5-31-68 he was helping a driver to stack some pallets in a truck when he developed a pain and stiffness in his neck.

On 6-4-68 he went to see Dr. N. Elson and was referred to Dr. L. Leve.
He developed a numbness in the entire right index finger and one-half of the middle finger on the radial side.
He was referred to Dr. P. Clarke for x-rays.
Following this he was placed in a cervical collar.
He was also examined by Dr. L. Zinker in October 1968.

This person was also evaluated by Dr. F. Geib in May 1969 and a myelogram at the Highland Hospital was negative.
In May 1970 he came under the care of Dr. Alexandra Feldmahn.
He was re-examined by Dr. Geib in May 1970 and at this time Dr. Geib felt that this was a negative physical examination.
Also in May 1970 Dr. Feldmahn felt the claimant had a carpal tunnel syndrome.

In October 1970 a volar carpal tunnel ligament release was carried out by Dr. E. Miller at the Rochester General Hospital.
Claimant does not feel there was any improvement after this surgery. However, he states he is sleeping better at night.
At the present time he is taking daily Prednisone and Darvon Compound.

A 180

There is also a letter in the file by Dr. S. Brancato which states he saw this claimant in January 1964, July 1965 and September 1968, because of pain in his right shoulder which was referred into the fingers.

Claimant returned to work March 1st after a ten month's absence.

PRESENT COMPLAINTS: "My hand still aches and swells up. I have my grip back."

PHYSICAL EXAMINATION: This person is 5'7½ in height and weighs 196 pounds.

NECK: No abnormal curves were noted and there were no muscle spasms of the posterior or lateral neck muscles. There was no soft tissue swelling. Forward and backward bending of the head and neck was normal, as was lateral motion and rotation to the right and left.

UPPER EXTREMITY -Right: No atrophy was noted about the shoulder girdle. The right arm and forearm measured a little bit larger than the left. There was a full range of motion at the shoulder and elbow joints. At the wrist there was a well-healed, almost invisible scar, over its palmar aspect and this extended partially into the palm. Palmar flexion appeared to be normal and there was possibly a slight loss of dorsal flexion. Lateral motion, pronation and supination was normal. Function of the fingers of this hand was normal.

BACK: No abnormal curves were noted and there were no paravertebral lumbar or thoracic muscle spasms. On forward bending his finger tips came to within two inches of his toes. Backward bending and lateral motion to the right and left was normal.

LOWER EXTREMITIES: These were negative for any recent pathology. Function of all joints was normal.

NEUROLOGICAL EXAMINATION: The deep tendon reflexes were bilaterally equal and active.

CONCLUSION: I did not feel this person, at the time of my examination, presented any objective signs of disability that could

Employers Mutual Ins. Co.

-3-

re: Lionel Bastien

171

have resulted from any injury sustained in his accident of May 1968.

It appears he has made a complete recovery and there is no reason to anticipating any permanency.

Yours very truly,

Joseph C. Maggio M.D.

JCM:ab

Joseph C. Maggio, M.D.

A 182

CHARLES I. MAGGIO, M. D.
JOSEPH C. MAGGIO, M. D.
140 BROAD STREET WEST
ROCHESTER, NEW YORK 14614

172

February 17, 1971

Employers Mutual Insurance Company
847 James Street
Syracuse, New York

Re: Lionel Bastian
Vs: R. T. French
Inj: 5/21/68
WCB: 7680 5804
Subsequent

Gentlemen:

On 2/17/71 I examined the above named claimant at the Compensation Board independent of the state medical examiner.

PRESENT COMPLAINTS: "My index finger is numb."

EXAMINATION: Upper extremities: Right: There is a well healed scar over the flexor aspect of the wrist that extends into the palm of the hand. There is a full range of motion at the wrist and in the fingers. There is a slight swelling of the hand.

Left: Function of all joints is normal.

CONCLUSION: This claimant has a minimal partial disability at this time.

Very truly yours,

Joseph C. Maggio M.D.
Joseph C. Maggio, M.D.

JCM/jm

Orig. sent to WCB

A 183

CHARLES I. MAGGIO, M. D.
JOSEPH C. MAGGIO, M. D.
140 BROAD STREET WEST
ROCHESTER, NEW YORK 14614

December 22, 1970

Employers Mutual Insurance Company
847 James Street
Syracuse, New York

Re: Lionel Bastian
Vs: R. T. French
Inj: 5/21/68
WCB: 7680 5804
Subsequent

Gentlemen:

On 12/17/70 I examined the above named claimant at the Compensation Board independent of the state medical examiner.

HISTORY OF ACCIDENT: Indicates the claimant sustained an injury to his neck and was diagnosed as having a carpal tunnel syndrome, the right side, with the release of the volar carpal ligament in October 1970.

PRESENT COMPLAINTS: "It is the same."

EXAMINATION: Neck: There is a full range of motion, and no muscle spasms present.

Upper extremities: Right: Function of the shoulder and elbow is normal. Wrist: There is a well healed scar over the flexor aspect extending into the palm of the hand. He cannot make a tight fist due to the slight swelling of the hand.

CONCLUSION: The claimant is working, he has a minimal partial disability.

Very truly yours,

Joseph C. Maggio M.D.
Joseph C. Maggio, M.D.

JCM/jm

Orig. sent to WCB

A 184

CHARLES I. MAGGIO, M. D.
JOSEPH C. MAGGIO, M. D.
140 BROAD STREET WEST
ROCHESTER, NEW YORK 14614

174

January 8, 1970

Employers Mutual Insurance Company
847 James Street
Syracuse, New York

Re: Lionel Bastian
Vs: R. T. French
Inj: 5/21/68
WCB: 7680 5804

Gentlemen:

On 1/7/70 I examined the above named claimant at the Compensation Board independent of the state medical examiner.

HISTORY OF ACCIDENT: Indicates the claimant sustained an injury to his neck while working. X-rays showed extensive degenerative changes at the C-5, C-6 and C-7 levels and a cervical myelogram was negative.

PRESENT COMPLAINTS: "My right index finger is numb and half of the middle finger."

EXAMINATION: Neck: There are no muscle spasms present. There is a full range of motion.

Upper extremities: Function of all joints is normal.

CONCLUSION: This claimant has no objective evidence of disability.

Very truly yours,

Joseph C. Maggio M.D.
Joseph C. Maggio, M.D.

JCM/jm

Orig. sent to Dept of Labor

A 185

8
ALEXANDRA L. FELDMAHN, M.D.

XXXXXXXXXXXXXXXXXXXX
ROCHESTER, NEW YORK 14620

Telephone 473-1336

1501 East Avenue
14610

175

768 05804

Neurological Consultation
February 5, 1971

BASTIEN, Mr. Lionel
628 Carson Avenue
Rochester, New York

The patient comes in today with considerable clinical improvement. He has not been waking up at night as often as before because of discomfort in his hand. He actually recalls waking up only three or four times in the past month, while he used to wake up at least three or four times a week. He had one episode in which he felt something like "an electric shock" coming down his right arm, but his right thumb has not been aching as much as before. He can now flex his fingers and move them without any discomfort.

On examination, the swelling of the right hand has disappeared. The patient has a good grip and he can oppose his thumb effectively. There are still sensory changes in the distribution of the median nerve.

The patient should continue Prednisone, 10mg. three times a day and it is estimated that in another two or three weeks he will be able to return to work.

A. Feldmann

Alexandra Feldmahn, M.D.

A 186

EXHIBIT NO. 37 (7/25)

ALEXANDRA L. FELDMAHN, M.D.

~~XXXXXXXXXXXXXXXXXXXX~~
ROCHESTER, NEW YORK 14620

1501 East Avenue
14610

176

Telephone 473-1336

Neurological Consultation
February 26, 1971

BASTIEN, Mr. Lionel
628 Garson Avenue
Rochester, New York

Mr. Bastien had a rash develop on his arm and he saw a physician for this, who prescribed Medrol in large doses with gradual decrease of the dosage. When Medrol was started, he cut down on the Prednisone.

On examination, today, the muscle strength of all the fingers of the right hand is good. There is still some diminished sensation in the distribution of the right median nerve. The patient has not had any discomfort at night and he finds that he can use his right arm well without discomfort.

IMPRESSION: Carpal tunnel syndrome, motor function recovered with some persistence of sensory changes.

The patient may be allowed to return to work on March 1, 1971.

A. Feldmahn

Alexandra Feldmahn, M.D.

A 187

A 187

7680583-
5-2-77

ALEXANDRA L. FELDMAHN, M.D.

XXXXXXXXXXXXXXXXXXXX
ROCHESTER, NEW YORK 14620

1501 East Avenue
14610

Telephone 473-1336

177

Neurological Consultation
January 6, 1971

BASTIEN, Mr. Lionel
628 Garson Avenue
Rochester, New York 14609

Mr. Bastien had surgery on his right hand on October 20, 1970 for the relief of carpal tunnel pressure. He came in on December 19, quite concerned because while the scar was well healed, his hand was quite swollen in the palm and in the thenar eminence. He was most concerned with a feeling of numbness and pain in the index finger. At night the pain extended to the elbow and sometimes to the shoulder.

On examination, there was still some weakness in the opponens of the right thumb, but improvement as compared with previous examinations. Sensory examination showed diminished sensation in the distribution of the median nerve. The palm and all the fingers of the hand except the fifth digit were swollen.

The patient was assured that recovery from surgery sometimes takes longer in some individuals than in others. Since he did not have any contraindication except for a history of possible ulcer, Prednisone was started in doses of 10mg. t.i.d. The patient was told to return for repeat examination.

When seen on January 6, 1971, Mr. Bastien had good strength in the opponens of the right thumb, but still had some pain, especially at night in a pattern consistent with carpal tunnel syndrome. He was told to continue Prednisone in increased doses for another month, when he will be checked again.

IMPRESSION: Persistent carpal tunnel syndrome - right hand.

A. Feldman

Alexandra Feldmahn, M.D.

cc: Workmen's comp.
R. T. French Co.

A 188

XXXXXXXXXXXXXXXXXXXX 1501 East Avenue
14610

178

September 2, 1970

RE: BASTIEN, Mr. Lionel
628 Carson Avenue
Rochester, New York

TO WHOM IT MAY CONCERN:

Mr. Bastien has been unable to work since May 5, 1970, because of
carpal tunnel syndrome with marked weakness of the right thumb, atrophy
in the thenar eminence and diminished sensation of the distribution of
the median nerve. He is scheduled for surgery in October and his return
to work cannot be determined at the present time.

Alexandra Feldmann, M.D.

A 189

179

Employers Insurance of Wausau

847 JAMES STREET • P.O. BOX 1045 • SYRACUSE, NEW YORK 13201 • PHONE (315) 478-4111

Workmen's Compensation Board
155 Main Street West
Rochester, New York 14614

May 27, 1970

D64-36461
Lionel Bastien -
R. T. French
WCB No. 76805804

Gentlemen:

The carrier hereby acknowledges receipt of the attached May 6, 1970 report of Dr. Feldmann.

On the basis of the prior medical reports in the file, the carrier hereby takes exception to the report of Dr. Feldmann, and contends the present findings and disability are unrelated to the injury of May 21, 1968.

Very truly yours

James L. Byrne
Compensation Claim Manager

JLByrne - Syr 6

c.c. R. T. French Co.
Dr. Alexander Feldmann

A 190

(F)

ALEXANDRA L. FELDMAHN, M.D.
XXXXXXXXXXXXXXXXXXXX 1501 East Avenue
ROCHESTER, NEW YORK 14620 14610
Telephone 473-1336

180

Neurological Consultation
May 6, 1970

BASTIEN, Mr. Lionel J.
628 Carson Avenue
Rochester, New York 14609

The patient is a 49 year old man who comes in at the recommendation of a friend who, according to the patient, has had similar symptoms and has been under my care. He is requesting that I see him in regard to a possible injury sustained at work.

According to the patient, he is employed at R. T. French Company. In 1968 at one point, he helped lift heavy bags of pellets which he estimates were about 90 lbs. in weight and he carried them with another man. He is not sure of the date, but recalls that the next day, he found that turning his head to the left caused a feeling of "pressure" on the right side of his neck and he had numbness in his index finger and the one next to it. He saw the plant nurse and was then sent to Dr. Elson. Since the patient's symptoms persisted, he went to a chiropractor for a couple of treatments, and when there was no improvement he came back to him for some medical treatment and had x-rays taken somewhere on Portland Avenue. He was out of work for six or eight weeks. Following this, he saw Dr. Zinker, who put him on a diet of yeast cakes and then last year some time he saw Dr. Geib, who apparently admitted him for a myelogram, which was reported as negative. About a month ago he saw Dr. Geib again. The patient states that his hand causes him a great deal of pain and this has been particularly bad in the last thirty days. He has to use his hands a great deal at work and he feels that the pain is very uncomfortable in the upper arm and in the shoulder. At one point, he was again put on a job loading heavy bags and he felt uncomfortable and wanted to go home but was not allowed to leave, by the nurse, according to the patient. He was seen by Dr. Brancato, who found his blood pressure to be elevated and because of his weight, advised diet and started him on Dextroamphetamine. The pain wakes the patient up at night and he usually gets up and walks around and has difficulty finding a comfortable position.

On neurological examination, the findings are limited to the hand. There is marked weakness of the thumb on the right hand and the opposition of the thumb and little finger is not possible. This movement is performed better on the left side. (The patient has short hands with rather stubby fingers) There is atrophy in the thenar eminence. Sensory examination shows diminished sensation in the distribution of the median nerve.

IMPRESSION: The patient has a history which is quite typical of carpal tunnel syndrome and he has the neurological findings to substantiate this diagnosis. When pain is referred to the arm and shoulder, it is often misleading and it is understandable that he has had various types of treatment before for this condition and a myelogram to rule out any possible nerve root compression.

In view of the severity of the patient's symptoms and their duration, I would recommend surgical treatment. Since the use of the patient's hands at his work is aggravating his symptoms, he should be excused from work at this time until he can obtain relief.

A. Feldman
Alexandra Feldman, M.D.

A 191

181

ALEXANDRA L. FELDMAHN, M.D.
XXXXXXXXXXXXXXXXXXXX 1501 East Avenue
ROCHESTER, NEW YORK 14620 14610
Telephone 473-1336

Neurological Consultation
May 20, 1970

BASTIEN, Mr. Lionel J.
628 Garson Avenue
Rochester, New York

Mr. Bastien comes in again because he is concerned about the severity of his symptoms. Since it has not been possible to arrange for a consultation for him today, I will try him on Prednisone for a period of time to see if relief can be obtained. He is given a prescription for Prednisone, 10mg. q.i.d. for five days and will call to check on further adjustments of dosage at that time.

A. Feldman

Alexandra Feldmahn, M.D.

*PH sent this
05-2*

A 192

STATE OF NEW YORK
WORKMEN'S COMPENSATION BOARD

ATTENDING PHYSICIAN'S
SUPPLEMENTARY REPORT

Enter "X" to Show Type of Report: ☐ 15-DAY REPORT

☐ PROGRESS REPORT

☒ FINAL REPORT

PLEASE PRINT OR TYPE — INCLUDE ZIP CODE IN ALL ADDRESSES

182

WCB CASE NO. (If Known)	CARRIER CASE NO. (If Known)	DATE OF INJURY AND TIME	ADDRESS WHERE INJURY OCCURRED (City, Town or Village)	SOCIAL SECURITY NUMBER
		6-68	Rochester, New York	
INJURED PERSON	NAME	AGE	ADDRESS	
	IXX LIONEL J. BASTIEN	49	628 Garson Avenue, Rochester, New York	
EMPLOYER	R. T. French Company		1 Mustard Street, Rochester, New York	
INSURANCE CARRIER	Employers Mutual of Wausau		847 James Street, Syracuse, New York	

ANSWER ALL QUESTIONS. AVOID USE OF INDEFINITE TERMS SUCH AS "UNKNOWN," "?", ETC.

H I S T O R Y	1. Have you filed Form C-48, or other report, setting forth history? ☒ YES ☐ NO	If "No," answer 1 (a) and (b) below.
	(a) State how injury occurred and give source of this information. (If claim is for occupational disease, include occupational history and date of onset of related symptoms).	
	(b) Was patient previously under the care of another physician for this injury? ☐ YES ☐ NO	
D I A G N O S I S	2. Is there any history or evidence of pre-existing injury, disease or physical impairment? ☐ YES ☐ NO	If "Yes," describe specifically.
	3. Present condition (include diagnosis, subjective complaints, objective findings, and any change of condition since last report. If patient was hospitalized since last report, so state and give name and address of hospital).	
	The operative wound has healed satisfactorily, and he states there is some improvement in his hand, but he says he still has some pain in the index finger.	
T R E A T M E N T	4. Nature of treatment: On October 20, the volar carpal ligament was released.	
	Date of your first treatment: 6-3-70	Date of your most recent treatment: 12-7-70
	Are you continuing treatment? ☐ YES ☐ NO	
D I S A B I L I T Y	5. Any the injury result in permanent restriction, total or partial loss of function of a part or member, or permanent facial, head or neck disfigurement? ☐ YES ☐ NO	
	If "Yes," describe: See #10	
	6. On what dates do you think patient was or will be able to:	Is patient working?
C A U S A L R E L A T I O N	(a) Resume limited work of any kind? Date:	(b) Resume his regular work? Date:
	7. If patient is unable to do his regular work, but can do limited work, specify his work limitations due to this injury.	
	8. In your opinion, was the occurrence described above (or in your previous report which gave this information) the competent producing cause of the injury and disability (if any) sustained? ☐ YES ☐ NO	
R E H A B I L I T A T I O N	9. Is rehabilitation treatment or services or evaluation therefor advised? ☐ YES ☐ NO	Explain:
	Exhibit-38	
	If rehabilitation treatment or services or evaluation is advised, has referral been made? ☐ YES ☐ NO	
R E M A R K S	10. Enter here additional information of value, requests for authorization, etc.	
	He has now recovered from his surgery. Further treatment will be carried out	
	by Dr. Erdmann.	

Dated 1-9-71	Typed or Printed Name of Attending Physician GEOFFREY H. MILLER, M.D.	Address 1201 EMMES Portland Ave., Rochester, N.Y. 14621
WCB Rating Code 0007	WCB Authorization or No. 215673	Telephone No. 544-1650
		Written Signature of Attending Physician

ANSWER ALL QUESTIONS. AVOID USE OF INDEFINITE TERMS

See Reverse Side

EXHIBIT 38
(5/1/71)

A 193

STATE OF NEW YORK
WORKMEN'S COMPENSATION BOARD

ATTENDING PHYSICIAN'S
SUPPLEMENTARY REPORT

Enter "X" to Show Type of Report: ☐ 15 DAY REPORT ☒ PROGRESS REPORT ☐ FINAL REPORT

PLEASE PRINT OR TYPE - INCLUDE ZIP CODE IN ALL ADDRESSES

183

WCB CASE NO. (If Known)	CARRIER CASE NO. (If Known)	DATE OF INJURY AND TIME	ADDRESS WHERE INJURY OCCURRED (City, Town or Village)	SOCIAL SECURITY NUMBER
		6-58	Rochester, New York	
INJURED PERSON	NAME LIONEL J. BASTIEN	AGE 49	ADDRESS 626 Carson Avenue, Rochester, New York	
EMPLOYER	H. T. French Company		1 Hustard Street, Rochester, New York	
INSURANCE CARRIER	Employers Mutual of Vaucluse		847 James Street, Syracuse, New York	

ANSWER ALL QUESTIONS. AVOID USE OF INDEFINITE TERMS SUCH AS "UNKNOWN," "?," ETC.

HISTORY	1. Have you filed Form C-48, or other report, setting forth history? ☒ YES ☐ NO	If "No," answer 1 (a) and (b) below.	
	(a) State how injury occurred and give source of this information. (If claim is for occupational disease, include occupational history and date of onset of related symptoms).		
	(b) Was patient previously under the care of another physician for this injury? ☐ YES ☐ NO		
DIAGNOSIS	2. Is there any history or evidence of pre-existing injury, disease or physical impairment? ☐ YES ☐ NO	If "Yes," describe specifically.	
	3. Present condition (include diagnosis, subjective complaints, objective findings, and any change of condition since last report. If patient was hospitalized since last report, so state and give name and address of hospital):		
	Under general anesthesia on 10-20-70, volar carpal ligament divided under tourniquet. Postoperative course good.		
TREATMENT	4. Nature of treatment:		
	Release of volar carpal ligament.		
	Date of your first treatment: 6-3-70	Date of your most recent treatment: 10-20-70	Are you continuing treatment? ☒ YES ☐ NO
DISABILITY	5. May the injury result in permanent restriction, total or partial loss of function of a part or member, or permanent facial, head or neck disfigurement? ☐ YES ☐ NO		
	If "Yes," describe:		
	6. On what dates do you think patient was or will be able to:	Is patient working?	
CAUSAL RELATION	(a) Resume limited work of any kind?	(b) Resume his regular work?	☐ YES ☒ NO
	Date:	Date:	
	7. If patient is unable to do his regular work, but can do limited work, specify his work limitations due to this injury.		
REHABILITATION	8. In your opinion, was the occurrence described above (or in your previous report which gave this information) the competent producing cause of the injury and disability (if any) sustained? ☐ YES ☐ NO		
	9. Is rehabilitation treatment or services or evaluation therefor advised? ☐ YES ☐ NO		
	Explain:		
REMARKS	10. Enter here additional information of value, requests for authorization, etc.		
	It is too early to tell if the surgery will completely relieve his symptoms.		

Dated 11-17-70	Typed or Printed Name of Attending Physician Robert H. Miller, M.D.	Address 1224 Portland Avenue, Rochester, New York
WCB Rating Code 50-7	WCB/Authorization No. 215673	Telephone No. 554-1880
Signature of Attending Physician		

ANSWER ALL QUESTIONS. AVOID USE OF INDEFINITE TERMS.

C-4 (7-70)

See Reverse Side

194

STATE OF NEW YORK
WORKMEN'S COMPENSATION BOARD

ATTENDING PHYSICIAN'S
SUPPLEMENTARY REPORT

184

Enter "X" to Show Type of Report: ☐ 15-DAY REPORT ☐ PROGRESS REPORT ☐ FINAL REPORT

WCB CASE NO. (If Known)	CARRIER CASE NO. (If Known)	DATE OF INJURY AND TIME	ADDRESS WHERE INJURY OCCURRED
71,825,904		6-68	Rochester, New York
INJURED PERSON	NAME	AGE	ADDRESS
	Lionel J. Bastien	49	628 Garson Avenue, Rochester, New York
EMPLOYER	R.T. French Company		1 Mustard Street, Rochester, New York
INSURANCE CARRIER	Employers Mutual of Mausau		847 James Street, Syracuse, New York

ANSWER ALL QUESTIONS. AVOID USE OF INDEFINITE TERMS SUCH AS "UNKNOWN," "ETC."

1. Have you filed Form C-43, or other report, setting forth history? ☐ YES ☒ NO If "No," answer 1 (a) and (b) below.
- (a) State how injury occurred and give source of this information. (If claim is for occupational disease, include occupational history and date of onset of related symptoms).

See enclosed copy of notes.

HISTORY

- (a) Was patient previously under the care of another physician for this injury? ☒ YES ☐ NO If "Yes," enter his name and address, and reason for transfer under "Remarks" (Item 10).
2. Is there any history or evidence of pre-existing injury, disease or physical impairment? ☐ YES ☐ NO If "Yes," describe specifically.

3. Present condition (include diagnosis, subjective complaints, objective findings, and any change of condition since last report. If patient was hospitalized since last report, so state and give name and address of hospital).

DIAGNOSIS

4. Nature of treatment:

Date of your first treatment: 6-3-70 Date of your most recent treatment: Are you continuing treatment? ☐ YES ☐ NO

If treatment is continuing, estimate its probable duration. If it has terminated, indicate reason.

TREATMENT

5. May the injury result in permanent restriction, total or partial loss of function of a part or member, or permanent facial, head or neck disfigurement? ☐ YES ☐ NO

DISABILITY

If "Yes," describe:

6. On what dates do you think patient was or will be able to:

(a) Resume limited work of any kind? Date: (b) Resume his regular work? Date: Is patient working? ☐ YES ☐ NO

7. If patient is unable to do his regular work, but can do limited work, specify his work limitations due to this injury.

CAUSAL RELATION

8. In your opinion, was the occurrence described above (or in your previous report which gave this information) the competent producing cause of the injury and disability (if any) sustained? ☐ YES ☐ NO

9. Is rehabilitation treatment or services or evaluation therefor advised? ☐ YES ☐ NO Explain:

REHABILITATION

- If rehabilitation treatment or services or evaluation is advised, has referral been made? ☐ YES ☐ NO If "Yes," to whom? If "No," indicate why.

REMARKS

10. Enter here additional information of value, requests for authorization, etc.
This is a request for authorization to do a release of the volar carpal ligament of the right hand

Dated 6-11-70	Typed or Printed Name of Attending Physician RODGER H. MILLER, M.D.	Address 1799 Portland Avenue, Rochester, New York
WCB Filing Code SM-7	WCB Authorization No. 215672	Telephone No. 544-1880
		Written Signature of Attending Physician

C-6 (3-67)

ANSWER ALL QUESTIONS. AVOID USE OF INDEFINITE TERMS.

See Reverse Side

A 195

MEMORANDUM
TO THE ATTENDING PHYSICIAN

185

1. Reports on this form (or on Form C-5 if filed by an ophthalmologist) must be filed within 15 days after you first render treatment in a workmen's compensation case or a volunteer fireman's benefit case, and thereafter as progress reports at intervals of 22 days or less during continuing treatment.

Please ask your patient for his Workmen's Compensation Board Case Number and the Insurance Carrier's Case Number, if they are known to him, and show these numbers on your reports, in the spaces provided.

File the signed original of this report directly with (1) CHAIRMAN, WORKMEN'S COMPENSATION BOARD at the office of the district in which the accident occurred and file a signed copy with (2) the INSURANCE CARRIER, if known, or the EMPLOYER.

2. The Law provides that no claim for medical or surgical treatment shall be valid and enforceable unless the physician furnishes the employer (or insurance carrier) and the Chairman with a preliminary certificate (C-4a) of injury and treatment within 48 hours following first treatment, and within 15 days thereafter a more complete report (C-4 or C-5), and subsequent thereto progress reports (C-4 or C-5) at intervals of 22 days or less, with a final report (C-4 or C-5) upon termination of treatment.
3. This form must be signed personally by the attending physician and must contain his authorization certificate number and code letters. If the patient is hospitalized, it may be signed by a licensed physician to whom the treatment of the case has been assigned as a member of the attending staff of the hospital.
4. CHANGE OF ATTENDING PHYSICIAN: The rules of the Chairman provide that "a physician authorized to treat workmen's compensation cases, when requested to supersede another physician, must, before beginning treatment of such patient, make reasonable effort to communicate with the attending physician to ascertain the patient's condition. The superseding physician must also advise the attending physician of the name of the person who has requested him to assume care of the case and state the reason therefor. If the second physician cannot contact the attending physician, and the claimant's condition requires immediate treatment, the said physician should advise the doctor previously in attendance within 48 hours that he now has the patient in his care. The preceding physician shall supply the succeeding physician with a complete history of the case".
5. AUTHORIZATION FOR CONTINUED MEDICAL CARE: When it is necessary to engage the services of a specialist, consultant, or surgeon, or to provide for physiotherapeutic procedures or x-ray examination costing more than \$35, or special diagnostic laboratory tests costing more than \$15, the physician must secure authorization from the employer, the insurance company, or the Chairman. Such authorization may be requested on this form under item 10. If authorization is not forthcoming or is not granted within five working days, or if a denial of authorization is not justified medically or otherwise, the special services required for the patient's welfare should be proceeded with on the ground that authorization has been unreasonably withheld. Such authorization is not required in an emergency under the provisions of Section 13-a (5).

In cases in which the claimant's physician prescribes a surgical appliance or dental treatment or denture, the physician should notify the employer or carrier of the need for such appliance or dental aid, and direct the claimant to the employer or carrier for the purpose of securing authorization for the purchase of such appliance or dental aid before the same is furnished to the claimant by the appliance dealer or dentist.

6. PENALTY FOR FALSE REPRESENTATION: If for the purpose of obtaining any benefit or payment under the provisions of the Workmen's Compensation or Volunteer Firemen's Benefit Laws, or for the purpose of influencing any determinations regarding any benefit or payment under the provisions of these laws, either for himself or any other person, any person willfully makes a false statement or representation, he shall be guilty of a misdemeanor.

WORKMEN'S COMPENSATION BOARD DISTRICT OFFICES

ALBANY 12201—1919 North Broadway. For all accidents in following counties: Albany, Clinton, Columbia, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Orange, Putnam, Rensselaer, Saratoga, Schoenectady, Schenectady, Ulster, Warren, Washington.

BINGHAMTON 13901—221 Washington Street. For all accidents in following counties: Broome, Chenango, Chenango, Cortland, Delaware, Otsego, Schoharie, Steuben, Sullivan, Tioga, Tompkins.

BUFFALO 14203—State Office Building, 125 Main Street. For all accidents in following counties: Cattaraugus, Chautauque, Erie, Niagara.

HEMPSTEAD 11550—175 Fulton Avenue. For all accidents in following counties: Nassau, Suffolk.

NEW YORK CITY 10007—50 Park Place. For all accidents in following counties: Bronx, Kings, New York, Queens, Richmond, Rockland, Westchester.

ROCHESTER 14614—155 Main Street West. For all accidents in following counties: Allegany, Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming, Yates.

SYRACUSE 13202—State Office Building, East Washington Street. For all accidents in following counties: Cayuga, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence.

C-4, Revised (3-67)

A 196

JOSEPH D. KEPES, M. D.
FRED VON KESSEL, M. D.
ROGER H. MILLER, M. D.

185

PLASTIC AND RECONSTRUCTIVE SURGERY
AND SURGERY OF THE HAND

1299 PORTLAND AVENUE
ROCHESTER, NEW YORK 14621
544-1880

BASTIEN, LIONEL J.
628 GARSON AVENUE
ROCHESTER, NEW YORK 14609
288-8216

49 YRS: 11-5-20
EMPL: R.T. FRENCH CO.
WIFE: OLA
EMPL: R.T. FRENCH CO.
GVMC: 747660

6-3-70
R: DR. FELDMANN
F: DR. BRANCATO

6-3-70 This forty-nine year old man has a long history dating back to June of 1968, when he was throwing pallets while working at the R.T. French Co. and strained the right side of his neck. The following day his neck was very stiff. He was seen by Dr. Lloyd Leve who treated him for five or six weeks with multiple heat treatments. X-ray examination at Dr. Gulino's office were negative for fracture. He subsequently saw Dr. Zinker who treated him with Vitamin B and yeast cake diet. The pain in his shoulder finally left, but he was left with a constant aching in the index and the radial side of the middle finger. He is very exact in his description of the aching pain and numbness and tingling in the radial side of the middle finger and the index finger. His thumb is essentially spared from the symptoms. He subsequently saw Dr. Geib who examined him with a myelogram at Highland Hospital. This was negative. Following this he received stretching treatments to his neck for five or six times. On May 3, he became more symptomatic. He saw Dr. Alexandra Feldmahn who felt that this most likely was a carpal tunnel syndrome. Has been unable to do his usual job.

On examination at this time, there is some suggestion that he has some problem with the median nerve and this may be through the carpal tunnel. However, with the past history of problem in his neck, it could also be at that level. I think it is worthwhile operating on his hand to relieve the volar carpal ligament. However, he was advised that possibly this would not relieve his symptoms.

Arrangements will be made.

A 197

State of New York
WORKMEN'S COMPENSATION BOARD
REPORT OF MEDICAL EXAMINATION

187

W. C. B. CASE No. 76805804

CLAIMANT Lionel Bastien

EMPLOYER R.T. French Co.

STATE OF NEW YORK } Dr. Mele
MONROG County } SS

ing duly sworn deposes and says that he is a Physician, duly licensed in the State of New York; that he is a Competent Examining (Physician), (Ophthalmologist) of the New York State Workmen's Compensation Board; that he has this examined the claimant named above and makes the following report and findings therefrom:

Claimant had surgery for a carpal tunnel syndrome October 1970.

He complains of occasional pain in the right index finger and swelling of the right hand.

Examination reveals a well healed scar on the flexor surface of the right wrist. There is a mild defect in dorsi flexion of the right hand. There is no other defect of right upper extremity. There is no defect of head and neck.

Claimant has a mild partial disability.

It is too early for final adjustment.

Reexamination in 6 months for final adjustment.



Subscribed and sworn to before me
this 24th day of May 19 71 } rs

[Signature of [Physician] [Ophthalmologist]]

Authorized Under Sec. 142, Subd. 3,
of the Workmen's Compensation Law.

This report was dictated under oath in the minutes of _____
(Date)

A 198

C-71



C-71

C-71

C-71

C-71

EXHIBIT NO. 39

NEUROSURGERY

J. LARUE WILEY, M. D.
WILLIAM W. COTANCH, M. D.
1501 EAST AVENUE
ROCHESTER, NEW YORK 14610
TELEPHONE 716: 473-2800

188

June 15, 1973

David Sewall Miller, M. D.
220 Alexander Street
Rochester, New York 14607

Re: BASTIEN, Lionel J. (52)
Emp: R. T. French Co.
Inj: 5/21/68
WCB# 76805804
Carrier Case # D64 - 36461

Dear Sewall:

Your patient, Lionel Bastien was admitted to the Genesee Hospital on June 3, 1973. There had been no changes in his symptoms since my previous notes to you and his neurologic examination also remained unchanged. He continued to complain of sensory loss and pain in the right hand as previously described.

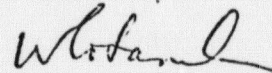
The day following admission a myelogram was done at which time the entire neural canal was well visualized with particular attention to the cervical region. Oblique and cross table lateral films failed to show any significant etiology for his symptoms. The study was interpreted as normal. The oil was satisfactorily removed.

Mr. Bastien did have some headaches following the myelogram for several days but ultimately was discharged on June 7, 1973 without other complications. While in the hospital he was noted to have an elevated blood serum sugar and the patient was advised to be in touch with his family physician regarding further treatment of this.

At the present time there is no definitive evidence to substantiate any cervical root involvement at this time and I expect his symptoms continue to be related to his old carpal tunnel problem.

Thanks very much for having me help care for Mr. Bastien.

Sincerely yours,



William W. Cotanch, M. D.

SM9 214222

WWC:caw

cc: Employers Insurance of Wausau
WCB

EXHIBIT NO. 40
A 199

NEUROSURGERY

J. LARUE WILEY, M. D.
WILLIAM W. COTANCH, M. D.
1501 EAST AVENUE
ROCHESTER, NEW YORK 14610
TELEPHONE 716: 473-2800

189

June 5, 1973

David Sewall Miller, M. D.
220 Alexander Street
Rochester, New York 14607

Re: BASTIEN, Lionel J. (52)
Emp: R. T. French Co.
Inj: 5/21/68
WCB # 76805804
Carrier Case # D64 - 36461

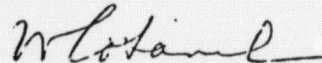
Dear Sewall:

I again saw Mr. Lionel Bastien in the office on May 18, 1973. I had received most of the previous reports from his past problems and workup. He continues to complain of similar symptoms with no relief.

I see no choice but to go ahead and admit him for repeat myelography. Arrangements were made to do so at the Genesee Hospital in the near future.

Thanks again for having me help care for Mr. Bastien and I will keep you informed as to his future course and progress.

Sincerely yours,



William W. Cotanch, M. D.

SM9 214222

WWC:caw

cc: Employers Insurance of Wausau
WCB

P.S. Authorization is hereby requested from the compensation carrier to proceed with diagnostic myelography and possible surgery if the myelogram is positive.

A 200

NEUROSURGERY

J. LARUE WILEY, M. D.
WILLIAM W. COTANCH, M. D.
1501 EAST AVENUE
ROCHESTER, NEW YORK 14610
TELEPHONE 716: 473-2500

May 15, 1973

David Sewall Miller, M. D.
220 Alexander Street
Rochester, New York 14607

Re: BASTIEN, Lionel J. (52)
Emp: R. T. French Co.
Inj: 5/21/68
WCB # 76805804
Carrier Case # D64 - 36461

Dear Sewall:

I saw your patient, Lionel Bastien in the office on May 7, 1973. This 52-year old gentleman comes in with a very complex problem involving pain in the right side of his neck, shoulder, and arm.

Mr. Bastien tells me that he injured himself at work at the R. T. French Company on May 21, 1968. He apparently somehow hurt his neck while loading boxcars. The exact details of the injury were not well described to me. Since that time he has been treated by a chiropractor and an orthopedic surgeon without relief. He ultimately saw a neurosurgeon and was given a yeast cake diet. Following this he saw another neurosurgeon in 1970 and had a myelogram at Highland Hospital by Dr. Geib. He was then put in traction. Following this, without experiencing any relief, he saw Dr. Feldmann who gave him some pills. He next was seen by a plastic surgeon who did a carpal relief in the right hand. All of this did not bring any great change in his symptoms. He has lost a total of about ten months from work. He presently has a constant ache in the right shoulder and hand. He says it sometimes goes up and down the right side of his neck. He has some pain and a numb feeling in the second and third fingers of his right hand. He states that his right hand has a rubbery feeling. Coughing and sneezing aggravate his symptoms. The pain is all on the right side and is exactly as it was three years ago.

XRays of the cervical spine have been done but I have not seen these.

On examination there are not many findings on Mr. Bastien. There is certainly no small muscle atrophy in the right hand, nor can I detect any specific weakness. He does complain of diminished pinprick over the right index finger and radial half of the third finger. The carpal tunnel scar is well healed and there is no Tinel's sign. Both biceps and triceps jerks are present and symmetrical. There is good range of motion at all joints. The remainder of his neurologic examination is unremarkable. There is no Horner's syndrome.

A 201

Re: BASTIEN, Lionel J. (52)

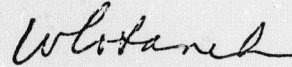
May 15, 1973

191

Making a definite diagnosis at this time on Mr. Bastien is quite difficult as you can appreciate. I have asked for his cervical spine films, previous myelogram and electromyographic studies to be forwarded to me for review. I am going to see Mr. Bastien again in the office in two weeks and hopefully with the help of this ancillary information we can map out some type of course for him. Of course, all of these signs could be due to degenerative disease in his cervical spine but with the immensity of his previous workup I would be reluctant to do anything specific about it without knowledge of more of the preceding events.

Thank you very much for having me help care for Mr. Bastien and I will keep you informed as to his future course and progress.

Sincerely yours,



William W. Cotanch, M. D.

SM9 214222

WWC:caw

cc: Employers Insurance of Wausau
WCB

A 202

Santo F. Brancato, M. D.
1771 Culver Road
Rochester 9, New York 14609

February 6, 1970

Employers Insurance of Wausau
57 Monroe Avenue
Pittsford, New York 14534

Dear Sirs:

This is in reply to your letters
regarding Mr. Lionel Bastien.

File # D64-36461
WCB No 76805804
R.T. French Co

The first time I saw Mr. Lionel Bastien
for shoulder pain was January 6, 1964. Again on
July 7, 1965 and again on September 6, 1968. The
complaints were always pain in the right shoulder
and radiating down the arm to fingers. The last time
complained of pain in the shoulder and it ended in
index and middle finger of right hand.

Diagnosis: Neuritis of radial nerve. He was
given Thiamine Hydrochloride 100 mg., three times
a day and proamide injection. I have not seen the
patient since September 6, 1968.

Bill is \$5.00

*Am paying
an injection
of 2-17.*

Very truly yours,

Santo F. Brancato, M.D.
Santo F. Brancato, M.D.

SFB:mk

EXHIBIT NO. 41

A 203

C-2 (11-71)

STATE OF NEW YORK
WORKMEN'S COMPENSATION BOARDEMPLOYER'S REPORT
OF INJURY

Send this notice directly to Chairman, Workmen's Compensation Board at address shown on reverse side within ten (10) days after accident occurs. Copy also should be sent to your insurance carrier.
PLEASE PRINT OR TYPE—INCLUDE ZIP CODE IN ALL ADDRESSES—EMPLOYEE'S SS# MUST BE ENTERED BELOW

WORK CASE NO.	CARRIER CASE NO. AND	CODE NO.	DATE OF ACCIDENT	EMPLOYEE'S SS#
				070-16-6221

(ENTER CASE NUMBERS, IF KNOWN, IN ABOVE SPACES)

NAME		MAIL ADDRESS	E. R. NO.
1. EMPLOYER	The P. T. French Company	1 Mustard Street Rochester, N. Y. 14609	
LOCATION (if different from mail address)			
2. INSURANCE CARRIER	EMPLOYERS MUTUAL LIABILITY INS. CO. OF WISCONSIN P.O. BOX 1045, SYRACUSE, NEW YORK 13201		
3. INJURED PERSON	Lioré J. Bastien (First Name) (Middle Initial) (Last Name)	628 Carson Avenue, Rochester, N.Y. 14609 (Home Address)	

EMPLOYER	4. Nature of business: (State principal products manufactured or sold or services rendered) _____ Mfg. Mustards, Salces and Grocers Sundries
ACCIDENT	5. Address where accident occurred (Include county) 1 Mustard St. Rochester, N.Y. Monroe County
	6. Date of accident: 2/22/73 19____, Day of Week: Thurs. Hour of Day: A. M. 6:45 P. M. If occupational illness, date of initial diagnosis: 19____
	7. (a) Date disability began: 2/23/73 19____ Hour of Day: A. M. 4:00 P. M. (b) Was injured paid in full for this day? No
	8. Name of Department (where regularly employed) and foreman Dept. 904 - Sanitation & Cleaning - Mr. George Tardier
INJURED PERSON	9. When did you or foreman first know of injury? 2/22/73
	10. Names and addresses of witnesses: _____
	11. (a) Marital status: M (b) Sex: M
	12. Age: 52 13. Did you have on file employment certificate or permit? _____
	14. Occupation: (a) Job title for which employed: Laborer (b) Occupation when injured: Laborer
	15. (a) How long employed by you? 2/21/51 (b) Piece or time worker? time (c) Hours per day: 8 (d) Days per week: 5
	16. Earnings in your employ: (a) Rate per: Hour \$3.934 Day \$ Week \$ Month \$ (b) Total earnings paid during year prior to date of accident: (include bonuses paid, value of board, lodging, etc.) \$ Average per week: \$ (c) Bonuses or premiums paid and included in item 16(b) above: \$ (d) Estimated value of board, lodging, or other advantages in addition to wages: (included in item 16(b) above) \$ (e) Calendar weeks in past 52 in same kind of work as at time of injury: _____
	17. State nature of injury and part or parts of body affected: (as "Injury to Chest," etc.) Back injury
	18. Did you provide medical care? Yes If so, when? 2/22/73
	19. Name and address of physician: Dr. D. Scott Miller, 220 Alexander St. Rochester, N.Y. (2/28)
NATURE OF INJURY OR OCCUPATIONAL DISEASE	20. Name and address of hospital: Genesee Hospital, Rochester, N. Y. (2/22/73)
	21. Probable length of disability: Unknown
	22. (a) Has employee returned to work? No (b) If so, give date: _____ (c) At what occupation? _____ (d) At what weekly wage? \$ _____
FATAL CASES	NOTE: Form C-11 must be filed each time there is any change in the employment status as reported in item 22 above.
	23. Has injured died? No (a) If so, give date of death: _____ (b) Name and address of nearest relative: _____
CAUSE OF ACCIDENT OR OCCUPATIONAL DISEASE	24. (a) What was employee doing when accident occurred? (Describe briefly as "loading truck," "operating press," "shoveling dirt," "painting with spray gun," "walking downstairs," etc.) Pulling a small cabinet from wall with two other employees (b) Where did accident occur? (Specify whether on the employer's premises, and indicate if in street, factory yard, on loading platform, in factory, etc.) Office Building
	25. How was accident or occupational disease sustained? (Describe fully, stating whether injured person slipped, fell, was struck, etc., and what factors led up to or contributed to accident. Use additional sheets, if necessary.) Employee allowed that he & two other employees were pulling a small cabinet which was nailed to the wall & he felt pain in right back.
	26. (a) What specific machine, tool, appliance, gas, liquid, or other substance or object was most closely connected with this accident or occupational disease? Cabinet nailed to wall (b) If mechanical apparatus or vehicle, what part of it? (State if gears, pulley, motor, etc.) _____
	27. Were mechanical guards or other safeguards (such as goggles) provided? _____ (a) Were they in use at time of accident? _____ (b) Was machine, tool, or object defective? _____ If so, in what way? _____

Enter "X" in this box if accident was reported on Form C-24	DATE OF THIS REPORT: 2/23/73
Enter "X" in this box if accident previously reported on Form C-25	FIRM NAME: The P. T. French Company
	SIGNED BY: M. Mulach R. M. Mulach

C-2

C-2

C-2

C-2

C-2

1103-1107 (11-71)

EXHIBIT NO. 40

A 204

LYNN R. CALLIN, M. D.
TELEPHONE: 546-6550
CHARLES C. HECK, M.D.
TELEPHONE: 546-8160
D. SEWALL MILLER, JR., M. D.
TELEPHONE: 546-7880
WILLIAM A. DOLAN, M. D.
TELEPHONE: 546-8140

MONROE ORTHOPAEDIC ASSOCIATES, P.C.
TWO TWENTY ALEXANDER STREET
ROCHESTER, NEW YORK 14607

February 20, 1975

194

Employers Insurance of Wausau
847 James Street
P. O. Box 1045
Syracuse, New York 13201

Re: Lionel J. Bastien
628 Garson Avenue
Rochester, New York 14609
vs: R. T. French
Inj: 2/22/73
WCB: #7730 2530
Carrier Case: #6456114

Dear Sirs:

Lionel Bastien returns today on 2/17/75, having essentially no problems with his shoulder. His primary problem continues to be that of spine stiffness and recurrent pain associated with weather changes, etc. He does have arthritis of the entire spine with limited lower back flexion and limited cervical spine rotation and extension. He has had some recurrent episodes of pain in the base of his neck and recurrent headaches associated with muscle spasm in the back of his head. These have been treated at home with home cervical traction and a heating pad. He has occasional right arm pain with radiation into the hand. However, he has been worked up completely by a neurosurgeon as well as myself, and I feel that his current condition is stable, has not changed from the last visit, he remains permanently disabled, and I do not see where he will be returning to work in the near future or actually if at all.

The patient has stopped taking the Valium because he is not sure that it helps him that much, and I told him there was no reason to go back on it. He is to continue with aspirin or Bufferin to the exclusion of other medicines. I plan to see him in four months' time again.

Sincerely yours,

D. Sewall Miller, Jr.
D. Sewall Miller, Jr., M. D.

DSM/amp

cc: HCB
SB 217550
SS: 004 32 1915

A 205

EXHIBIT NO. 43 (17 pages)

LYNN R. CALLIN, M. D.
TELEPHONE: 546-6550
CHARLES C. HECK M.D.
TELEPHONE: 546-6160
D. SEWALL MILLER, JR., M. D.
TELEPHONE: 546-7880
WILLIAM A. DOLAN, M. D.
TELEPHONE: 546-8140

MONROE ORTHOPAEDIC ASSOCIATES, P.C.
TWO TWENTY ALEXANDER STREET
ROCHESTER, NEW YORK 14607

November 26, 1974

Employers Insurance of Wausau
847 James Street
P. O. Box 1045
Syracuse, New York 13201

Re: Lionel J. Bastien
628 Garson Avenue 14609
vs: R. T. French
Inj: 2/22/73
WCB: #7730 2530
Carrier Case: #6456114

Dear Sirs:

Lionel returns today on 11/19/74, complaining of essentially the same problems. However, his neck and right arm problems appear to be getting worse. He now has more constant pain along the nerve roots especially down into the index finger.

On exam, he has about 50% of normal motion of the cervical spine, about 30% of normal motion at the lumbosacral and lumbar area. The patient has been unemployed for two years, and I do not feel that he is really employable.

He is having problems with the Bureau of Disability Determinations and obtaining Social Security. I am a little bit at loss to explain why they do not approve him as he obviously has severe progressive degenerative arthritis which is not responding to conservative therapy. The patient was tried on a new medication today, Motrin, 400 mgs. p.o. t.i.d. He was told to take this for approximately ten days, and if he shows improvement, he is to then continue on it. I plan to see him again in a few months' time in follow up. There is really very little I can do for this man other than symptomatic treatment. The possibility of doing an anterior disc excision and fusion has been considered; I have not mentioned this to the patient because I do not want to raise his hopes. But with his continued isolated nerve root symptoms, then perhaps this might be a solution to some of his problem.

Sincerely yours,

D. Sewall Miller, Jr.

D. Sewall Miller, Jr., M. D.
Dictated, but not read.

DSM/amp

cc: WCB

SF- 217550

SS: 004 32 1915

A 206

LYNN R. CALLIN, M. D.
TELEPHONE: 548-8550

CHARLES C. HECK, M.D.
TELEPHONE: 548-8160

D. SEWALL MILLER, JR., M. D.
TELEPHONE: 548-7880

WILLIAM A. DOLAN, M. D.
TELEPHONE: 548-8140

MONROE ORTHOPAEDIC ASSOCIATES, P.C.

TWO TWENTY ALEXANDER STREET

ROCHESTER, NEW YORK 14607

196

August 30, 1974

Mr. James L. Byrne
Employers Insurance of Wausau
P. O. Box 1045
Syracuse, New York 13201

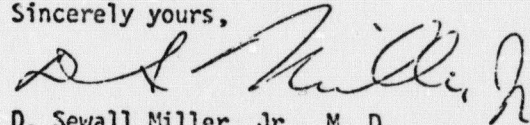
Re: Lionel J. Bastien
628 Garson Avenue 14609
vs: R. T. French
Inj: 2/22/73
WCB: #7730 2530
Carrier Case: #6456114

Dear Mr. Byrne:

Lionel Bastien returns today, 8/22/74, doing worse in general. He complains of generalized back stiffness and pain, both in the lumbosacral region as well as in the upper thoracic region with some radiation into the left shoulder area. He complains that the left shoulder no longer moves as well as it used to, and it hurts him a lot. Clinically, the patient has marked limitation of left shoulder function. He has 60 degrees of external rotation and about 70 degrees of internal rotation. The opposite side also has limitation of internal and external rotation as well as limitation of abduction to about 100 degrees. Clinically, he has some crepitus in the shoulder, and x-rays of his shoulder fail to reveal any marked abnormality other than mild degenerative changes.

The shoulder was injected with 6 mgs. of Decadron and 25 mgs. of Xylocaine. Hopefully, this will relieve some of his symptoms. He is to return for follow up in three to four months. I feel he has generalized progressive degenerative arthritis and that perhaps he should have a more complete work up by the Arthritis Unit at Strong Memorial Hospital. However, we will leave that up to his physician, Dr. Renzi, to decide.

Sincerely yours,


D. Sewall Miller, Jr., M. D.

DSM/amp

cc: HCB

SB 217550

SS: 004 32 1915

cc: Dr. Renzi

A 207

LYNN R. CALLIN, M. D.
TELEPHONE: 946-6570
CHARLES C. HECK, M.D.
TELEPHONE: 946-6160
D. SEWALL MILLER, JR., M. D.
TELEPHONE: 946-7880
WILLIAM A. DOLAN, M. D.
TELEPHONE: 946-8140

MONROE ORTHOPAEDIC ASSOCIATES, P.C.

TWO TWENTY ALEXANDER STREET
ROCHESTER, NEW YORK 14607

July 1, 1974

Mr. James L. Byrne
Employers Insurance of Wausau
P. O. Box 1045
Syracuse, New York 13201

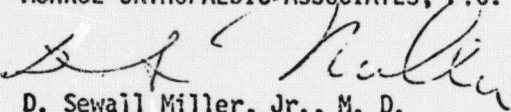
Re: Lionel J. Bastien
628 Garson Avenue 14609
vs: R. T. French
Inj: 2/22/73
WCB: #7730 2530

Dear Mr. Byrne:

Lionel J. Bastien, I feel, is presently almost completely disabled as my last letter and last visit will show. In the conversation with the claims manager from the insurance company on 5/17/74 I told him at that time that I felt the patient was perhaps 50 percent disabled and that 25 percent of the patient's disability was secondary to the injury at work. However, since that time I have seen him again, and I feel he is more limited than this; the exact details are noted in my last examination of him on 6/20/74.

Sincerely yours,

MONROE ORTHOPAEDIC ASSOCIATES, P.C.


D. Sewall Miller, Jr., M. D.

DSM/amp

cc: WCB
SB 217550
SS: 004 32 1915

A 208

LYNN R. CALLIN, M. D.
TELEPHONE: 546-6330

WILLIAM M. BOGER, M. D.
TELEPHONE: 546-8140

198

CHARLES C. HECK, M. D.
TELEPHONE: 546-8140

D. SEWALL MILLER, JR., M. D.
TELEPHONE: 546-7880

ORTHOPAEDIC SURGERY

220 ALEXANDER STREET

ROCHESTER, NEW YORK 14607

May 21, 1974

PT 1
530 200
Mr. James L. Byrne
Employers Insurance of Wausau
P. O. Box 1045
Syracuse, New York 13201

Re: Lionel J. Bastien
628 Garson Avenue
Rochester, New York 14609
vs: R. T. French
Inj: 2/22/73
WCB: #7730 2530
Carrier Case: #6456114

Dear Mr. Byrne:

The report on Lionel J. Bastien by Dr. Normal Egel was forwarded to me. I do agree with his statement, and I do not feel that the patient is totally disabled because of his accident. However, I do feel that he has a partial disability secondary to the accident in the fact that it did activate and aggravate his underlying condition.

Sincerely yours,

D. Sewall Miller, Jr.
D. Sewall Miller, Jr., M. D.

DSM/amp

1-2 811
1-2 811
1-2 811
5-28-74
A 209

LYNN R. CALLIN, M. D.
TELEPHONE: 546-8580

CHARLES C. HECK, M. D.
TELEPHONE: 546-8160

WILLIAM M. BOGER, M. D.
TELEPHONE: 546-8140

D. SEWALL MILLER, JR., M. D.
TELEPHONE: 547 7080

ORTHOPAEDIC SURGERY

220 ALEXANDER STREET ROCHESTER, NEW YORK 14607

199

March 21, 1974

Employers Mutual of Wausau
P. O. Box 1045
Syracuse, New York 13201

Re: Lionel J. Bastien
628 Garson Ave., Rochester, N.Y. 14609
Vs. R. T. French
Inj: 2/22/73
WCB: #7730 2530
Carrier Case: #6456114

Dear Sirs:

The patient returns on 3/14/74 little changed from his last visit. He was seen by Dr. Wolf. In the meantime the large sebaceous cyst drained.

His back pain, his neck pain, and his lack of neck motion are all essentially secondary to the severe degenerative arthritis.

The patient is unable to obtain a job because of his history of arthritis and yet the Bureau of Disability and Social Services states that he is employable. This is somewhat of a quandary both for the patient and myself. He cannot do the same type of heavy work he previously did because of his advanced arthritis. His employers or would-be employers realize this and, therefore, he is unemployable in his present state and with his background.

If the Bureau of Social Services feels that he is ineligible for a disability pension, then I feel they should retrain him in something he can do, and he should be sent to the DBR for this.

The patient will return to see me in three to four months for follow-up.

Sincerely yours,

D. Sewall Miller, Jr.
D. Sewall Miller, Jr., M. D.

DSM/dew

✓ cc: WCB
SB 217550
SS- 004 52 1915

A 210

LYNN R. CALLIN, M. D.
TELEPHONE: 545-9330

CHARLES C. HECK, M. D.
TELEPHONE: 545-8180

WILLIAM M. BOGER, M. D.
TELEPHONE: 545-9140

D. SEWALL MILLER, JR., M. D.
TELEPHONE: 545-7880

200

ORTHOPAEDIC SURGERY

220 ALEXANDER STREET ROCHESTER, NEW YORK 14607

February 18, 1974

Employers Mutual of Wausau
P. O. Box 1045
Syracuse, New York 13201

Re: Lionel J. Bastien
vs: R. T. French
Inj: 2/22/73
WCB Case #7730 2530
Carrier Case #6456114

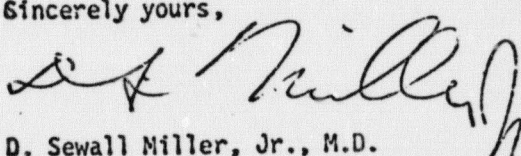
Dear Sirs:

On February 4 this patient returned to my office early because of diffuse pain in his back, which he had had for the previous two weeks. This has had him generally feeling lousy.

He complains primarily of pain in the area of the previous soft tissue mass which appeared to be a lipoma. He does have a small hair follicle over it, and it is slightly warm, very tender, and much firmer than it was previously. It appears that he probably has an infection in the area. It may be a large sebaceous cyst which has become infected.

He was, therefore, referred up to either Dr. Wolf or Dr. Bloch for examination and probable drainage.

Sincerely yours,


D. Sewall Miller, Jr., M.D.

DSM/dew

cc: WCB
SB 217550
SS: 004 32 1915

A 211

LYNN R. CALLIN, M. D.
TELEPHONE: 545-5550

WILLIAM M. BOGER, M. D.
TELEPHONE: 545-9140

CHARLES C. HECK, M. D.
TELEPHONE: 545-5100

D. SEWALL MILLER, JR., M. D.
TELEPHONE: 545-7880

201

ORTHOPAEDIC SURGERY

220 ALEXANDER STREET ROCHESTER, NEW YORK 14607

January 14, 1974

Employers Mutual of Wausau
P. O. Box 1045
Syracuse, N. Y. 13201

Re: Lionel J. Bastien
Vs: R. T. French
Inj: 2/22/73
WCB Case # 7730 2530
Carrier Case # 6456114

Dear Sirs:

Patient returned to this office 1/9/74, approximately five months after last being seen.

In the interval, he has suffered intermittent repeated problems with his back, but these have been controlled by medication or by rest. He has run into a major problem with employability. He is willing to work, but no one will hire him. At his most recent job he was working satisfactorily evidently, having some pain, but states that he was not complaining at all and was managing fairly well, however, he is to be let go prior to becoming eligible for more company benefits. Therefore, I feel that the patient is permanently disabled as a result of his back condition.

He continues to have intermittent problems in the thoracic area with radiation up and down the spine. He also has some intermittent problems related to the thoracic cervical junction with radiation down his arm, this has been detailed out in the past.

Patient also has some problems now with occasional leg radiation, associated with his low back pain. His low back pain is intermittent in nature.

On exam, he continues to exhibit marked limitation of spine motion. Forward flexion at the trunk is limited to about 40 to 45 degrees. Because of a fixed, moderate dorsal kyphosis, this gives the casual appearance of being greater, perhaps as much as 70-80 degrees, but the actual motion in the patient's lumbo sacral and lumbar spine is no more than 40 or 45 degrees. Trunk rotation is markedly limited to perhaps 25 to 30 degrees each way; lateral bends are limited to perhaps 20 degrees, either way. Cervical spine rotation is markedly limited to about 40 or 45 degrees to each side.

Repeat X-rays of the thoracic lumbar area reveal severe degenerative arthritic changes in the thoracic spine, most noticeable from the thoracic levels T-8 to T-12. In this area, he has large osteophytes both anteriorly

A 212

Employers Mutual of Wausau

Re: Lionel J. Bastien

Pg. 2

1/14/74

and laterally with some bridging.

I feel that the patient had some degenerative arthritis and that the injury at R. T. French Co., has set off a chain of events which is evidently irreversible. I feel that the patient is totally, permanently and disabled for his previous type of heavy lifting. He might be able to do some type of light job, a job that required standing and walking around with only light lifting. He is probable capable of this, as standing does not bother him a great deal. He might be referred to DVR for this.

Patient will be continued to be treated conservatively. I plan to see him again in 2 months time.

A consideration to an early disability retirement might be considered if he is eligible for this, as at the present time I can see no job possibilities for this man.

He was sent for rather extensive Laboratory work-up to rule out the possibility of some unusual form of ankylosing spondylitis. The marked changes anteriorly might make one think of this, however, these appear to be degenerative in nature.

Yours very truly,

D. Sewall Miller, Jr.
D. Sewall Miller, Jr., M. D.

DSM/kde

CC: Department of Labor
WCB Code: SB 217550
SS# 004 32 1915

A 213

A 213

LYNN R. CALLIN, M. D.
TELEPHONE: 545-6330

CHARLES C. HECK, M. D.
TELEPHONE: 545-8160

WILLIAM M. BOGER, M. D.
TELEPHONE: 545-8140

D. SEWALL MILLER, JR., M. D.
TELEPHONE: 545-7800

203

ORTHOPAEDIC SURGERY

220 ALEXANDER STREET ROCHESTER, NEW YORK 14607

August 22, 1973

Employers Mutual of Wausau
P.O. Box 1045
Syracuse, New York 13201

WCB Case #7730 2530
Carrier Case #D 6456114

Re: Lionel J. Bastien
vs: R.T. French
Inj: 2/22/73

Dear Sirs:

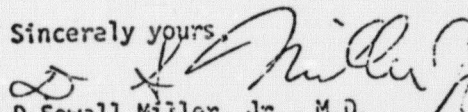
Lionel returned to the office on 8/20/73 essentially recovered from his previous injury.

His primary complaint is that of index finger numbness and occasional shoulder and arm pain associated with his old cervical spine injury and osteoarthritis with compression of cervical nerves.

His back problem is only a minor annoyance on occasion when he has done a lot of stretching, lifting or bending. The pain appears to be located primarily in the region of the latissimus dorsi, but this does not appear to have any localized area on examination.

The patient may resume all his normal activities. He will return to see me on a p.r.n. basis only.

Sincerely yours,


D. Sewall Miller, Jr., M.D.

DSM:lv

cc: WCB
SB 217550
SS# 004 32 1915

cc: file

A 214

204

LYNN R. CALLIN, M. D.
TELEPHONE: 848-8550

WILLIAM M. ROGER, M. D.
TELEPHONE: 848-8140

CHARLES C. HECK, M. D.
TELEPHONE: 848-8160

D. SEWALL MILLER, JR., M. D.
TELEPHONE: 848-7000

ORTHOPAEDIC SURGERY

220 ALEXANDER STREET ROCHESTER, NEW YORK 14607

June 20, 1973

Employers Insurance of Wausau
P.O. Box 1045
Syracuse, New York 13201

WCB Case #7730 2530
Carrier Case # D 6456114
Re: Lionel J. Bastien
vs: R. T. French
inj: 2/22/73

Dear Sirs:

Lionel J. Bastien returned to the office on 6/18/73 with essentially no change in his hand problem.

A myelogram by Dr. Cotanch was negative.

His low back problem has settled down to one chronic in nature. However, he is able to work without much difficulty.

On exam, he has slight limitation of flexion and extension, but no specific pin point tenderness. He states that the pain has become chronic in nature and does not radiate to either leg.

The patient was, therefore, placed on Indocin 25 mg. po, t.i.d..

I plan to see him again in follow up in 6 to 8 weeks.

The patient has been back at work without much difficulty.

Sincerely yours,

D. Sewall Miller, Jr.
D. Sewall Miller, Jr., M.D.

DSM:lv

cc: WCB
SB 217550
SS# 004 32 1915

cc: file

A 215

LYNN R. CALLIN, M. D.
TELEPHONE: 846-6550

CHARLES C. HECK, M. D.
TELEPHONE: 846-8160

WILLIAM M. BOGER, M. D.
TELEPHONE: 846-8140 205

D. SEWALL MILLER, JR., M. D.
TELEPHONE: 846-7880

ORTHOPAEDIC SURGERY

220 ALEXANDER STREET ROCHESTER, NEW YORK 14607

May 14, 1973

Employers Insurance of Mausau
P.O. Box 1045
Syracuse, New York 13201

WCB Case #7730 2530
Carrier Case #D 6456114

Re: Lionel J. Bastien
Vs: R. T. French
Inj: 2/22/73

Dear Sirs:

Lionel is still having problems with his lower back. However, he is compensating fairly well. The pain remains localized in the lumbosacral area without leg radiation.

He was seen in the office on 5/7/73.

I feel he should be ready to return to work next week, therefore, he will return to work on Monday 5/14/73.

The patient has an appointment with Dr. Cotanch this afternoon about his hand problem.

The patient will return here in follow up in approximately 6 weeks.

Sincerely yours,

D. Sewall Miller Jr.
D. Sewall Miller, Jr., M.D.

DSM:lv

cc: WCB
SB 217550
SS# 004 32 1915

cc: file

A 216

A 21C

LYNN R. CALLIN, M. D.
TELEPHONE: 546-8530

WILLIAM M. BOGER, M. D.
TELEPHONE: 546-8140

CHARLES C. HECK, M. D.
TELEPHONE: 546-8180

D. SEWALL MILLER, JR., M. D.
TELEPHONE: 546-7880

205

ORTHOPAEDIC SURGERY

220 ALEXANDER STREET ROCHESTER, NEW YORK 14607

May 1, 1973

Employers Insurance of Wausau
P.O. Box 1045
Syracuse, New York 13201

MCB Case #7730 2530
Carrier Cast #D 6456114
Re: Lionel J. Bastien
vs: R. T. Frency
Inj: 2/22/73

Dear Sirs:

Mr. Bastien was seen again on 4/25/73.

He has been progressing well on conservative management. He still has some intermittent mid-thoracolumbar pain. This is aggravated by things such as pivoting or lifting. However, in general, the patient's condition is much improved. Flexion and extension of the trunk although limited, was essentially painless in my office today.

I feel that the patient's back problem is slowly resolving with his extensive osteoarthritis that will never completely disappear. However, the patient was told that he probably should return to work on May 7, 1973.

While in the office, he complained again about the numbness in his index and middle fingers and wondered if anything could ever be done for them. He has a long history of another compensation injury, dating back to 1968, I guess. It flared up in 1970 and, at that time, he had myelogram as well as electromyelographic studies which did show nerve conduction defect. Dr. Roger Miller performed a carpal tunnel release with virtually no change in the patient's hand symptoms. He stated that during this entire period, except for the myelogram he had no neck x-rays. Because of the definite sensory loss of the dermatomes comprising primarily those of C6 on the right, check films were taken in the office today. These reveal a definite osteophytic spike in the foramina between C5 and 6 on the right side. He also has a sharp spike between the foramina of C6 and 7. The patient's reflexes are good, however, he does have definite sensory deficit over C6 and perhaps part of C7. There is clear evidence of bony pathology in the nerve root outlet, and I feel that this patient probably would be a good candidate for neurosurgical decompression of the nerve root at C6 and perhaps of the C7 nerve root. The patient was also noted to have a positive Adson's test on the right, however, I feel that this is not really his primary problem.

The patient will return to see me for his back in approximately 4 weeks after he has been back at work for 2 or 3 weeks. I will try to arrange an appointment for this patient with either Dr. Conanch or Dr. Joseph McDonald to evaluate his cervical spine and the sensory changes.

Sincerely yours,

D. Sewall Miller, Jr.
D. Sewall Miller, Jr., M.D.

DSM:lv

cc: MCB
SS 217550
MAY 10 1973

A 217

LYNN R. CALLIN, M. D.
TELEPHONE: 946-6580

CHARLES C. HECK, M. D.
TELEPHONE: 946-8160

56114
207
WILLIAM M. BOGER, M. D.
TELEPHONE: 946-8140

D. SEWALL MILLER, JR., M. D.
TELEPHONE: 946-7880

ORTHOPAEDIC SURGERY

220 ALEXANDER STREET ROCHESTER, NEW YORK 14607

March 26, 1973

Employers Insurance of Wausau
P. O. Box 1045
Syracuse, New York 13201

WCB Case # 7730.2530 ✓
Carrier Case # D 6456114
Re: Lionel J. Bastien
vs: R. L. French
Inj: 2/22/73

Dear Sirs:

Mr. Bastien returned to the office on 3/16/73 showing a fair degree of improvement. However, he still has mild thoracolumbar stiffness and some pain in the area with attempted lifting and prolonged standing.

The patient is to continue on his Valium and Bufferin and he was given instructions in hyperflexion exercises and told to start doing them. I also told him that he should be ready to return to work in 3 to 4 weeks.

I will see him again in 3 more weeks.

AMM 4-13-73
Sincerely yours,

D. Sewall Miller
D. Sewall Miller, Jr., M.D.

DSM:lv

cc : WCB
SB 217550
SS# 004 32 1915

OK
4-12-77
A 218

EXHIBIT NO.

208

LYNN R. CALLIN, M. D.
TELEPHONE: 848-6530

WILLIAM M. BOGER, M. D.
TELEPHONE: 848-8140

CHARLES C. HECK, M. D.
TELEPHONE: 848-8180

D. SEWALL MILLER, JR., M. D.
TELEPHONE: 848-7880

ORTHOPAEDIC SURGERY

220 ALEXANDER STREET ROCHESTER, NEW YORK 14607

March 7, 1973

Employers Insurance of Wausau
P.O. Box 1045
Syracuse, New York 13201

Re: Lionel J. Bastien
vs: R.T. French
Inj: 2/22/73

Dear Sirs:

This 52 year old white male was seen for the first time in my office on 2/28/73 after referral from Genesee Hospital ED where he was seen on 2/22/73. Evidently, at work where the patient is a Janitor, he was helping move some wall cabinets when one of the cabinets, supposedly mounted on brackets, stuck and they were unable to lift it. After rather forceful straining the cabinet broke loose and it was found to be screwed to the wall. Shortly after this, the patient noted fairly sharp pain in his thoracolumbar junction without radiation. Also, at the same time, he had difficulty in bending over and straightening up again without a fair amount of pain. He went to the Genesee ED where examination revealed muscle spasm and he was sent home on bed rest and analgesics.

When seen on the above date in my office he was still complaining of pain in the low interscapular area and thoracolumbar junctional area. He states this has improved somewhat and, on exam, he has 60 degrees of flexion with extension to 20 degrees and then he complains of some back pain. Left and right bends are limited by perhaps 10 degrees; he has mild to moderate bilateral paraspinal muscle mass spasm. Straight leg raising causes some mild mid-back pain, however, confirmatory tests are negative. He does have fairly tight hamstrings with straight leg raising. Reflexes are symmetrical and normal; there are no parasthesias or distal sensory or motor changes. Hips, knees and SI joints all appear normal.

DIAGNOSIS: Acute thoracolumbar spine sprain, moderate degree.

The patient was started on Valium and Bufferin. He was told this would gradually clear. I plan to see him again in 3 weeks.

X-rays of the thoracolumbar spine revealed evidence of degenerative changes involving the lower thoracic spine with osteophytes anteriorly and to the right. There was no evidence of fracture.

Sincerely yours,

D. Sewall Miller, Jr.
D. Sewall Miller, Jr., M.D.

DSM:lv

cc: WCB
SB 217550
SS# 004 52 1915

A 219
EXHIBIT NO.

77302530

AUSTIN R. LEVE, M.D.
600 EAST AVENUE
ROCHESTER, N. Y. 14607
TELEPHONE (716) 244-4070

209

April 23, 1973

Workmen's Compensation Board
155 Main Street West
Rochester, New York 14614

Re: Lionel J. Bastien
628 Carson Avenue
Emp: R.T. French
Ins: Employers Insurance of Wausau
Inj: February 22, 1973

Gentlemen:

I examined the above claimant in my office on April 11, 1973 at the request of Employers Insurance of Wausau. I also reviewed the medical file which was provided. He was a 52-year-old white male who stated that on February 22, 1973 he was removing a cabinet from a wall while working and he injured his back. He said he went to The Genesee Hospital where he was examined and x-rays of his thoracolumbar spine were taken and reported negative for fracture. Some degenerative changes were noted. The patient said that he has been under the care of Dr. Miller. He said that he has not worked since the accident.

When seen on April 11, 1973 he was still complaining of pain in his lower back when he straightens up from bending. He said the pain goes up to his neck and he has some headache. He said Dr. Miller told him it is muscle spasm. He said he bought a new mattress in Spring because he had a soft mattress. He said his next appointment with Dr. Miller is on April 15, 1973. He said he last saw him three weeks ago. He said he had been taking medication and doing exercises for his back. He said he has gained ten pounds in the past five weeks, but he said he is a "light eater". He said "can't figure it out".

He indicated by way of past history that he had an injury to his arm in 1970. Dr. Lloyd Leve saw him for this and then he saw Dr. Alexander Feldman and Dr. Geib did a myelogram that was negative and he subsequently apparently had decompression of the carpal tunnel by Dr. Roger Miller. He said his fingers are still numb.

He said his back doesn't seem to be getting any better. He said when he sits he has a hard time getting up. He said Dr. Miller told him there is a trace of arthritis in the x-rays. He said he is taking eight Bufferin a day or aspirin. He said he also takes Valium and Percodan.

Examination on April 11, 1973 revealed the following. He gives his height as 5'8" and his weight as 210 pounds. He said he has "never weighed so much". He indicated the lumbosacral area as the site of his back pain. There is a good range of motion at the back in all directions considering his stature.

A 220
EXHIBIT NO. 44
(copy)

AUSTIN R. LEVE, M. D.
600 EAST AVENUE
ROCHESTER, N. Y. 14607
TELEPHONE (716) 244-4070

210

Re: Lionel J. Bastian

- 2 -

April 23, 1973

He forward flexes to reach the level of his mid legs with his fingertips with knees straight and he touches his toes with his knees bent moderately. He walks well on his toes and heels and he squats with encouragement. He complains that this bothers his back. There is a good range of motion at the neck. There is no neurological deficit or gross atrophy involving the lower extremities. Straight leg raising is accomplished to 80 degrees on each side. He complains of some hamstring pull when this maneuver is carried out on the left. When the range of flexion at his back is examined with him sitting on the table with his legs extended in front of him with knees straight he forward flexes to reach below the level of his mid legs with his fingertips. There is a 1" diameter lipoma at the mid dorsal spine.

IMPRESSION: I think this patient has a mild residual partial disability. I told him I thought he had recovered sufficiently to be able to return to work, however, I think he should avoid excessive bending and lifting for a few weeks before he resumes his regular duties. The patient said that he would be willing to return to work if they would accept him on those terms.

I see no basis to anticipate any permanency here.

Very truly yours,

A. R. Leve, M.D.

Austin R. Leve, M.D.

ARL:cg

cc: Employers Insurance (2)

A 221

77302530

64 56114

211

THE GENESEE HOSPITAL
An Affiliated Hospital
of
THE UNIVERSITY OF ROCHESTER
SCHOOL OF MEDICINE AND DENTISTRY
224 Alexander Street
Rochester, New York 14607

DEPARTMENT OF RADIOLOGY
GENESEE RADIOLOGICAL GROUP, P.C.

Bastien, Lionel

CW6

6/4/73

452013

CERVICAL MYELOGRAM: 12 cc's of Pantopaque were instilled into the lumbar spinal canal by Dr. Cotanch. The contrast media flowed freely up the spinal canal in the head down position filling the cervical spinal area. The cervical spinal cord is well outlined, is of normal size and in normal position. The nerve rootlets appear completely normal. On the right side at the level of C5-C6 and C6-C7 they do not fill quite as readily as those above or on the opposite side but, however, with fluoroscopic observation contrast media can be seen to pulsate past this region demonstrating no evidence of a persistent defect. The cross table lateral views demonstrate some minimal "washboarding" anteriorly at this level. The contrast media could be easily extended on the the clives.

On return of the dye from the head in the upright position there appear to be a pocketing of the dye in the mid dorsal region that is consistent with a small amount of contrast flowing extra arachnoid. No other unusual features were apparent.

IMPRESSION: Negative study.

Genesee Radiological Group, P.C.

by

Anthony Leone, M.D.
AL/jab/cm

A 222

1-2-73
1-2-73

EXHIBIT NO. 45
(Dong)

77302530

DEPARTMENT OF RADIOLOGY
GENESEE RADIOLOGICAL GROUP, P. C.

THE GENESEE HOSPITAL
An Affiliated Hospital
of
THE UNIVERSITY OF ROCHESTER
SCHOOL OF MEDICINE AND DENTISTRY
224 Alexander Street
Rochester, New York 14607

212

gastien, Lionel

Pre.
Adm.
for:
6/3/72

5/31/73

452013

PA & LATERAL CHEST: The aorta is somewhat tortuous. The heart has a transverse diameter of 15 cms. which is normal. The lungs are clear.

SUMMARY: Mild tortuosity of the aorta.

Genesee Radiological Group, P.C.

by

George J. Baron, M.D.
GJB/clk/cm

A 223

72-71

WORKMEN'S COMPENSATION BOARD

213

REPORT OF MEDICAL EXAMINATION

W. C. B. CASE No. 7730 2530

SOCIAL SECURITY NUMBER _____

CLAIMANT Lionel J. BastienEMPLOYER The R. T. French Co.

STATE OF NEW YORK

Monroe County

SS

Dr. Della Porta being duly sworn deposes and says that he is a Physician, duly licensed in the State of New York; that he is a Compensation Examining (Physician), (Ophthalmologist) of the New York State Workmen's Compensation Board; that he has this day examined the claimant named above and makes the following report and findings therefrom:

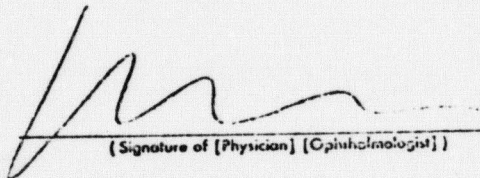
The claimant sustained an injury to the entire spine, superimposed on degenerative changes of the spine.

At the present time the claimant complains of a continuous aching over the cervical, thoracic and lumbar spine regions, with occasional radiation of pain down the left arm.

Examination reveals a mild increase of the dorsal round. There is a mild restriction to forward flexion of the spine but other motions of the spine are within normal limits. Straight leg raising is carried out to 80 degrees bilaterally. The deep tendon reflexes in both upper and lower extremities are equal and active.

The claimant has a mild partial disability.

Subscribed and sworn to before me

this 15th day of April 19 74 mm
(Signature of [Physician] [Ophthalmologist])Authorized Under Sec. 142, Subd. 3,
of the Workmen's Compensation Law.This report was dictated under oath in the minutes of _____
(Date)

C-71

C-71

C-71

C-71

C-71

EXHIBIT NO. 46

A 224

State of New York
WORKMEN'S COMPENSATION BOARD

2:4

REPORT OF MEDICAL EXAMINATION

W. C. B. CASE No. 7730 2530

SOCIAL SECURITY NUMBER _____

CLAIMANT Lionel J. Bastien

EMPLOYER R. T. French Co.

STATE OF NEW YORK }
Monroe County } SS Dr. Della Porta

being duly sworn deposes and says that he is a Physician, duly licensed in the State of New York; that he is a Compensation Examining (Physician), (Ophthalmologist) of the New York State Workmen's Compensation Board; that he has this day examined the claimant named above and makes the following report and findings therefrom:

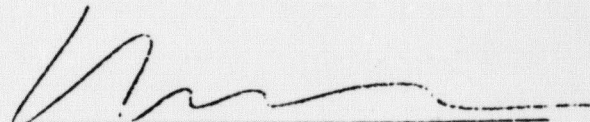
Claimant sustained a low back injury.

At the present time he complains of low back pain.

Examination reveals no muscle spasm or deformity of the back. Low back motion is carried out to a full range, except for a mild restriction of forward flexion which is associated with pain. Straight leg raising is carried out to 80° bilaterally. No atrophy is noted in either leg. Deep tendon reflexes are equal and active.

Claimant has a mild partial disability.

Subscribed and sworn to before me
this 3rd day of Jan. 19 74 rs


(Signature of [Physician] [Ophthalmologist])

Authorized Under Sec. 142, Subd. 3,
of the Workmen's Compensation Law.

This report was dictated under oath in the minutes of _____
(Date)

C-71

C-71

C-71

C-71

C-71

A 225

CHARLES I. MAGGIO, M. D.
JOSEPH C. MAGGIO, M. D.
140 BROAD STREET WEST
ROCHESTER, NEW YORK 14614

April 15, 1974

Employers Mutual Insurance Company
847 James Street
Syracuse, New York

Re: Lionel J. Bastien
Vs: R. T. French
Inj: 2/22/73
WCB: 7730 2530
Subsequent

Gentlemen:

On 4/15/74 I examined the above named claimant at the Compensation Board independent of the state medical examiner.

PRESENT COMPLAINTS: None.

EXAMINATION: Back: There are no muscle spasms present. On forward flexion the finger tips reach mid shin. There is slight loss of backward bending and lateral motion. Straight leg raising could be carried out bilaterally to 60 degrees. The deep tendon reflexes were present and equal. The left thigh and calf were smaller than the right side.

CONCLUSION: This claimant has no disability from this accident of 2/22/73.

Very truly yours,

Joseph C. Maggio, M.D.
Joseph C. Maggio, M.D.

JCM/jm

Orig. sent to WCB

A 226

EXHIBIT NO. 47

CHARLES I. MAGGIO, M. D.
JOSEPH C. MAGGIO, M. D.
140 BROAD STREET WEST
ROCHESTER, NEW YORK 14614

216

January 3, 1973

Employers Mutual Insurance Company
847 James Street
Syracuse, New York

Re: Lionel J. Bastien
Vs: R. T. French
Inj: 2/22/73
WCB: 7730 2530

Gentlemen:

On 1/3/74 I examined the above named claimant at the Compensation Board independent of the state medical examiner.

HISTORY OF ACCIDENT: Indicates the claimant sustained an injury to the low thoracic and lumbar areas of the back. X-rays showed degenerative changes in the lower thoracic spine.

PRESENT COMPLAINTS: "It still pains."

EXAMINATION: Back: No spasms were present. Straight leg raising was carried out bilaterally to 75 degrees. The deep tendon reflexes were present and equal. There was mild loss of all motion of the trunk.

CONCLUSION: This claimant has a mild partial disability. the condition is too early for final adjustment.

Very truly yours,

Joseph C. Maggio, M.D.
Joseph C. Maggio, M.D.

JCM/jm

Orig. sent to WEB

A 227

NORMAN EGEL, M. D.
220 ALEXANDER STREET
ROCHESTER, NEW YORK 14607

Area Code 716
Telephone 232-7224

217

March 15, 1974

ORTHOPAEDIC SURGERY

Re: LIONEL J. BASTIEN
628 Garson Avenue
Rochester, NY 14609

Emp: R. T. French Co.

Inj: 2-22-73

WCB: 7730 2530

Carrier: D 6456114

Mr. James L. Byrne
Employers Mutual Insurance Co.
P. O. Box 1045
Syracuse, NY 13201

Dear Mr. Byrne:

On March 12, 1974, Mr. Lionel J. Bastien was interviewed and examined and the contents of his medical folder reviewed.

Mr. Bastien is now aged 53 and states that prior to coming to Rochester in 1950, he had had over nine years in the military service from which he was separated in 1949 with no disability and no pension. He then spent three months in the Merchant Marines, but left it to begin employment at light work with Gerber's. He stayed at this for a year and then undertook employment at R. T. French Company in 1951. He remained employed there until June 29, 1973. His work was varied. Most of it appears to have been laboring work. At times he operated power-driven machines for moving bulky materials. It was on February 22, 1973, when he developed pain in the thoraco-lumbar area as he was attempting to remove a wall cabinet. He was treated for this by Dr. Sewall Miller whose initial report of March 7, 1973, indicated the diagnosis of acute thoraco-lumbar spine strain, moderate degree. The thoraco-lumbar spine x-rays were said to reveal evidence of degenerative changes involving the lower thoracic spine with osteophytes anteriorly and to the right. There was no evidence of fracture. He stated that he resumed work at French's on May 14th, but apparently worked off and on only presumably because of his continuing back symptoms. He was finally "fazed out" on June 29th. Dr. Miller's report of August 22, 1973, indicates that on his examination of the claimant on August 20th that he had essentially recovered from his previous injury. It was considered that his back problems were only of minor annoyance on occasion when he had done a lot of stretching and lifting or bending. He was dismissed from regular supervision. The patient then went to work for VWR, but quit after four days because "there was too much bending over". He returned to work on November 5th, working nights at "packaging". His employment there was terminated on January 14th because he was considered to be "a bad employment risk".

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EXHIBIT NO. 43
(Dime)

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At the present time he says his back pains all the time and that his hands and his ankles swell, that he can't get out of bed easily in the morning because of stiffness. Pain tends to be in the lower thoracic and lumbar area. With all this he has also pain in the right shoulder, in the arm, and discomfort in the right index finger.

It was pointed out in prior reports that he has had a disability in his neck which does not appear to be a significant factor in the disability he now professes which seems to be mostly in his lower back. He also reports in 1970 he had a carpal tunnel release on the right side without any relief of symptoms.

On examination he is a moderately obese man of 53 who moves rather stiffly with change of position. But during the course of disrobing he seemed to carry out the necessary movements without any notable pain or restriction. His passive range of neck motion was notably restricted and I felt this was clearly due to voluntary muscle spasm. Subsequently he demonstrated a full range of active shoulder motion without any difficulty at all. His shoulder, elbow, wrist, and finger motions were normal. His grip was symmetrically weak, but equally so in both hands. He had scarring over the dorsum of the left wrist, which is the site of a prior ganglionectomy. There is a scar over the volar aspect of the right wrist from which he had had a carpal tunnel release. His tendon reflexes in the upper extremities came through well and I could identify no objective neurologic findings. He had a recent incisional scar in the mid thoracic area from which he says an infected cyst had been removed. He had a measured chest expansion of about 1 1/4". On forward trunk flexion he bent over to bring his fingertips to 14 1/2 measured inches from the floor. He recovered the erect position all right. Lateral trunk motion is restricted. Extension is said to give rise to pain. On straight leg raising he came to 85° on either side. Passive range of hip joint motion was normal. His tendon reflexes were rather hyperactive in the lower extremities. He demonstrated his ability to squat and walk on his toes and on his heels.

X-rays of the thoraco-lumbosacral spine made at the Genesee Hospital on February 22, 1973, show no evidence of fracture. He does have moderate hypertrophic bone changes of the thoracic spine from the level of T8 through T12. These are obviously of long-standing. Films of the lumbosacral spine as such are not remarkable.

Films of April 1973 of the cervical spine show that he does indeed have degenerative changes at the level of C5, 6 and 7 characterized by hypertrophic changes encroaching upon the corresponding intervertebral foramina.

LIONEL J. BASTIEN

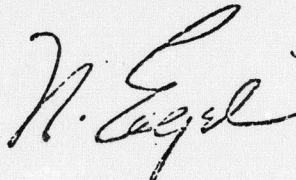
-3-

March 15, 1974

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CONCLUSIONS: I find this patient as having degenerative changes of the cervical spine and in the lower thoracic spine which certainly long antedated his injury of February 1973. I believe that the accident of February 22nd did give rise to an aggravation of the pre-existing degenerative changes in the lower thoracic spine and that he did go onto recovery from this aggravation as reflected in Dr. Miller's report of August 22, 1973, wherein he reported that the patient had essentially recovered from his previous injury. That he should experience recurrent episodes of pain in his mid and lower back, and his neck is the very nature of an essentially degenerative process and does not, in my judgment, stem solely because of the injury of February 22, 1973. There is no doubt that his degenerative process subject as it is to aggravation by stress, limits him in job choices, but certainly does not render him as totally disabled.

Very truly yours,



Norman Egel, M. D.

NE/sh

A 230

9/20/75

John J. Hampert
Bureau of Hearings & Appeals
RM 550

1 West Genesee St
Buffalo, N.Y. 14202

Dear Judge:

I'm writing
you to find out about your
decision on my appeal. I'm
in bad shape not getting
any better. I'm broke my
wife can't find a job, we
have no money, I'm back
on my house mortgage 259.16
my water bills, my gas
& electric, and other outstand-
ing debts, every one is after me
for money I just don't have it
my wife & I spent our life
savings to survive. I have a
prescription which I can't fill lack
of money. High Blood pressure.

Exhibit - 231
49

- 2 -

sugar - water + arthritis tablets
 I can't get aid from welfare
 they keep refusing me, they say
 I have to large of an income \$100.
 per month rental plus my 43.43
 per week compensation, after I
 pay my mortgage \$259.16 I
 don't have to much left.

They won't give me much food
 only in the hospital, I was getting
 645. with food stamps for 750
 twice a month, now they
 raise me from \$7.50 to \$17.50 for
 \$45. with food stamps twice a
 month. I just can't get any
 help from any one - I don't
 what will happen - I'm getting
 very depress if things continue
 I might wind up in a Mental
 Hospital & lose every thing we
 now own, we live like

-3-

I am sure, my wife is getting
 very nervous it preys on her
 mind to live under these conditions
 she might up & leave any day
 or wind up in a mental Hospital
 we have always work and never
 asked anyone for help, How
 much more of this have we
 taken. its been so long -
 I hope in Gods name you
 will answer my letter & let
 me know one way or the other
 I've forgotten what it is to
 live like a human being.

Thank You.
 079-16-5221
 Mr Lionel J Bastien
 628 Garrison Ave
 Rochester, N. Y. 14609

A 233



ALBERT D'ANTONI
Chairman

STATE OF NEW YORK
WORKMEN'S COMPENSATION BOARD
Two World Trade Center, New York, N.Y. 10017

BOARD ORDER OF RESTORAL

223

W. C. B. Case No.	Carrier Case No.	Social Security Number	Date of Accident
(76805804) 77302530	B6456114		2-22-73

In a notice of decision filed April 24, 1975, corrected October 8, 1975, in case #77302530, claimant has a permanent partial disability as a result of this accident. Claimant awarded compensation from October 24, 1974 to April 22, 1975 at \$43.43 reduced earnings with carrier to continue payments at \$43.43 reduced earnings and case closed on previous finding and on the finding claimant has a permanent partial disability.

Dr. D. Sewall Miller, in a narrative report dated June 10, 1975 finds claimant has pain in neck, back, both shoulders, is having problems with his legs and for "all intent and purposes, is totally disabled."

On application submitted in claimant's behalf, case #77302530 is reopened and restored to the Referee Calendar for further consideration on the question of continuing disability, degree and extent thereof.

Case #76805804 traveling as closed reference.

HCH/68

Referred to Examiner/ Rochester

Claimant Lionel J. Bastien,
628 Garson Ave.
Rochester, NY 14609
Employer The R T French Co.
1 Mustard St.
Rochester, NY 14609
Carrier Emp. Ins. of Wausau
PO Box 1045, 935 James St.
Syracuse, NY 13201
Claimant's Attorney or Representative Harold Cohen, Atty.
19 Church St.
Rochester, NY 14614

Albert D'Antoni

Chairman

Take notice that the above order was duly filed in the office of the Secretary of the Workmen's Compensation Board on this 16 day of Oct. 1975.

Catherine C. Hafele

Secretary

Exhibit
AC-1

A 234

LYNN R. CALLIN, M. D.
TELEPHONE 546-9500

CHARLES C. HECK, M. D.
TELEPHONE 546-9100

D. SEWALL MILLER, JR., M. D.
TELEPHONE 546-7990

WILLIAM A. DOLAN, M. D.
TELEPHONE 546-9140

MONROE ORTHOPAEDIC ASSOCIATES, P.C.
TWO TWENTY ALEXANDER STREET
ROCHESTER, NEW YORK 14607

September 23, 1975

204

Employers Insurance of Wausau
935 James Street
P. O. Box 1045
Syracuse, New York 13201

Re: Lionel J. Pastien
vs: R. T. French
Inj: 2/22/73
WCB: #7730 2530
SS: #079-16-5221

Dear Sirs:

Lionel was seen on 9/22/75 complaining of the same things; back pain and stiffness with limited motion and inability to work. He appears to have more shoulder involvement at this time, however, and now has difficulty in getting his hands behind his head or to the middle of his back because of inability to abduct the shoulders actively much more than 100 degrees on either side. He also had some limitation of external rotation; internal rotation lacks perhaps 10 degrees. The patient has to work his hands behind his head slowly because of lack of external rotation and shoulder abduction. The patient has evidently been refused Social Security benefits; I am not sure on what grounds. As far as I am concerned, the patient is now almost totally disabled and has been fairly severely partially disabled for one and a half years or so. Morphesic does not appear to have changed his overall condition. It does afford some local temporary relief. He has been unable to fill the prescription because he could not afford it. I told him to check into the Compensation Board; I felt that the insurance company should be paying for his prescriptions, but I felt he should check first. The patient is to continue heat to the locally involved areas and also obtain some more Morphesic if he can afford it. I feel that he is totally disabled at this time, and he will probably never be able to find any work.

Sincerely yours,

D. S. Miller
D. Sewall Miller, Jr., M. D.

DSM/amp

cc: WCB

SB 217550

SS: 004 32 1915

cc: Attorney Donald P. Kelly

cc: Veterans Administration--Buffalo

Exhibit
AC-2

A 235

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LIONEL J. BASTIEN,

Plaintiff

- vs -

F. DAVID MATHEWS, in his official
capacity as Secretary of Health,
Education and Welfare,

Defendant

CIVIL NO. 76-246

NOTICE OF MOTION

~~PLEASE TAKE NOTICE~~ that on February 28, 1977, in the United States District Court at Rochester, New York, at 10:00 a.m., or as soon thereafter as counsel can be heard, the defendant herein will move this Court for an Order dismissing this case, or in the alternative for summary judgment, upon the grounds that the Secretary's decision is supported by substantial evidence, and in support of this motion the defendant relies on all the pleadings filed herein including the transcript of the administrative record filed with the answer herein and the attached memorandum of law.

PLEASE TAKE FURTHER NOTICE that on the return date of this motion, February 28, 1977, the defendant will submit this motion to the Court for decision without oral argument.

Dated at Rochester, New York, January 20, 1977.

RICHARD J. ARCARA
United States Attorney

By: EUGENE WELCH
Asst. United States Attorney
233 U.S. Courthouse
Rochester, New York 14614
Telephone: 263-6762

TO: IAN C. DEWAAL, ESQ.
Monroe County Legal Assistance Corp.
80 West Main Street

A 236

A 237

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LIONEL J. BASTIEN,

Plaintiff,

-vs-

F. DAVID MATHEWS, in his Official
Capacity as Secretary of Health,
Education and Welfare,

Defendant.

AFFIDAVIT OPPOSING
MOTION

Civil No. 76-246

STATE OF NEW YORK)
COUNTY OF MONROE) ss.:

IAN C. DEWAAL, being duly sworn, deposes and says:

1. He is an attorney duly admitted to practice in
this court and represents the plaintiff herein.

2. He is fully familiar with all the facts and
circumstances of this case.

3. He makes this affidavit in opposition to
defendant's motion for an Order either dismissing this action
or granting summary judgment for the defendant.

4. The only question to be decided by the court is
one of law, namely, was the decision of the defendant supported
by substantial evidence.

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5. As more fully stated in plaintiff's motion for an Order granting summary judgment and attached Memorandum of Law, the defendant's determination was not supported by substantial evidence.

6. Your deponent has reviewed all the evidence in this case and the decision of the defendant denying plaintiff's claim and believes that the plaintiff has demonstrated that he is and has been disabled within the meaning of that term as defined in the Social Security Act.

WHEREFORE, your deponent respectfully requests that this court deny defendant's motion for an Order either dismissing this case or granting summary judgment for the defendant, and grant plaintiff's motion for summary judgment.

IAN C. DEWAAL

Sworn to before me, this

26th day of February, 1977.

5/ Gary Muldoon
Commissioner of Deeds
Rochester, N. Y. ~~EN~~

Com. Exp! Nov 7, 1978

A 238

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LIONEL J. BASTIEN,

Plaintiff,

-vs-

F. DAVID MATHEWS, in his Official
Capacity as Secretary of Health,
Education and Welfare,

Defendant.

Civil No. 76-246

NOTICE OF MOTION

PLEASE TAKE NOTICE that on March 14, 1977, in the United States District Court at Rochester, New York, at 10:00 a.m., or as soon thereafter as counsel can be heard, the plaintiff herein will move this Court for an Order denying defendant's Motion for an Order either dismissing this case, or in the alternative granting summary judgment for the defendant; and will also move this Court for an Order granting summary judgment to plaintiff, reversing the decision of the Secretary herein upon the grounds that the Secretary's decision is not supported by substantial evidence, and in support of this motion the plaintiff relies on all the pleadings filed herein including the transcript of the administrative record filed with the Answer herein and the attached Memorandum of Law and Affidavit by Ian C. DeWaal, sworn

to the ____ day of February, 1977.

PLEASE TAKE FURTHER NOTICE that on the return date of this motion, March 14, 1977, the plaintiff will submit this motion to the Court for decision without oral argument.

Dated at Rochester, New York, February 24, 1977.

BY: IAN C. DEWAAL, ESQ.
Monroe County Legal Assistance
Corporation
80 West Main Street
Rochester, New York 14614
Attorney for Plaintiff

TO:

EUGENE WELCH
Assistant United States Attorney
233 U.S. Courthouse
Rochester, New York 14614
Telephone: 716-263-6762

A 240

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LIONEL J. BASTIEN,

Plaintiff

- vs -

CIVIL 76-246

F. DAVID MATHEWS, in his Official
capacity as Secretary of Health,
Education and Welfare,

Defendant

Ian C. DeWaal
80 West Main Street
Rochester, N.Y. 14614
Attorney for plaintiff

Eugene Welch
Assistant United States Attorney
for the defendant

By notice of motion with supporting papers filed January 24, 1977 the defendant moved to dismiss the action, or, in the alternative, for summary judgment on the ground that the Secretary's decision is supported by substantial evidence. The defendant filed an affidavit opposing the motion.

By notice of motion filed March 1, 1977 the plaintiff moves for summary judgment in his favor.

This is an action under Section 205(g) of the Social Security Act as amended, 42 U.S.C. 405(g), to review a final determination of the Secretary of Health, Education and Welfare which denied plaintiff's application for disability insurance

benefits. The decision of the Administrative Law Judge became the final decision of the Secretary when it was approved by the Appeals Council after consideration of additional evidence.

The only issue here is whether the Secretary's decision that plaintiff was not under a disability is supported by substantial evidence. On due consideration it is hereby

ORDERED that the Secretary's final decision that the plaintiff was not under a disability is supported by substantial evidence. The Secretary is entitled to summary judgment accordingly.

Harold P. Burke

HAROLD P. BURKE
United States District Judge

July 8, 1977.

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United States District Court

FOR THE

WESTERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. Civ-76-246

LIONEL J. BASTIEN

vs.

JUDGMENT

F. DAVID MATHEWS, in his official capacity as
Secretary of Health, Education and Welfare

This action came on for ~~trial~~ (hearing) before the Court, Honorable **Harold P. Burke**,
United States District Judge, presiding, and the issues having been duly ~~tried~~
(heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the decision of the Secretary of Health,
Education and Welfare that plaintiff was not under a disability is
supported by substantial evidence and summary judgment is granted to
the defendant.

Dated at Buffalo, New York
of July , 19 77.

, this 11th day

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JOHN K. ADAMS

Clerk of Court